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ABSTRACT

This guide to undergraduate and graduate student loan programs focuses primarily on program administration and management in the context of student loan repayment and collection. By incorporating regulatory requirements with practical suggestions on managing student loan programs, the book provides a framework and a guide for those who are responsible for administering student loan portfolios at colleges and universities. The following 13 chapters address these issues: (1) "Perkins Loan Program"; (2) "Income Contingent Loan Program"; (3) "Health Professions Student Loan and Nursing Student Loan Programs"; (4) "Guaranteed Student Loan Programs"; (5) "Health Education Assistance Loan Program"; (6) "Institutional Loan Programs"; (7) "Administrative and Fiscal Standards"; (8) "Collection"; (9) "Contracting for Services"; (10) "Litigation and Bankruptcy"; (11) "Audits and Program Reviews"; (12) "The Regulatory Process"; and (13) "Consumer Credit Protection and Related Statutes". Appendixes contain sample forms, promissory notes, and other documents associated with student loan programs, selected federal regulations discussed in the text, statutes of limitations state by state, a glossary of terms and acronyms, and key resources and references for the student loan practitioner. (JB)

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Student Loan Programs: Management and Collection

James C. Dorian
Diane M. Ward

NACUBO

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Acknowledgments

Student Loan Programs: Management and Collection was written by James C. Dorian and Diane M. Ward. Mr. Dorian was the principal author; Ms. Ward contributed the legal and regulatory chapters, as well as some of the appendices. Mr. Dorian serves as the director of the loan department at Brown University. He has been a faculty member of the National Association of College and University Business Officers (NACUBO)/National Association of Student Financial Aid Administrators (NASFAA) Student Loan Management and Collections workshop, a major national professional development program for student loan managers and collectors, since 1984. In addition, Mr. Dorian, a nationally recognized expert in the field of student loan collection, has served as a trainer and program reviewer for the U.S. Department of Health and Human Services. Ms. Ward is the assistant controller at John Carroll University. As an attorney, she provided valuable insight into the legal implications of student loan collection and management.

In 1985, NACUBO published a revised edition of *Student Loan Collection Procedures,* in which Warren C. McAlvey and Anne J. Price covered the practices and procedures associated with the collection of student loans, particularly loans originating from campus-based revolving federal loan funds.

Student Loan Programs is a completely new publication intended to replace the 1985 NACUBO book. Since the previous publication was written, major changes have been made to the federal regulations governing the due diligence provisions for the student loan programs. In addition, Congress and federal agencies have amended the laws and regulations governing other student loan programs where loans originate off campus. These federal actions have increased responsibilities of institutions that participate in federally guaranteed student loan programs.

As a result, the content of the new publication has been updated to reflect regulatory amendments to the student loan programs covered in the 1985 book and expanded to include institutional requirements for other student loan programs, regardless of the point of loan origination. The scope of the book has also been increased to include topics associated with institutional administration and management of federal student loan programs.

The concept of *Student Loan Programs* was initiated and developed by

NACUBO's 1988-89 Student-Related Programs Committee, with the approval of the NACUBO Board of Directors. The 1988-89 Student-Related Programs Committee comprised Sister Anne Elise Tschida, The College of Saint Catherine (Chair); Robert Barnett, Paul Smith's College of Arts and Science; Robert Bride, Loyola Marymount University; Lester Brookner, Miami-Dade Community College; Barry Cohen, Montclair State College; William Gailey, Rollins College; Henry Jackson, Howard University; Jerry Schaffer, University of Florida; Arnold Tew, Cleveland State University; Timothy Christensen, NASFAA; and Elizabeth Nuss, National Association of Student Personnel Administrators (NASPA).

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NACUBO staff involved in the creation, management, and production of *Student Loan Programs* include Christine Larger, Associate Director for Public Policy and Management Programs (PPMP); Mary Jane Calais, Director of PPMP; Deirdre McDonald and Nigel Quinney, who edited the publication; and Carla Lott, who designed and produced the final publication.

Introduction

As the number of people who depend on loans to meet the rising costs of higher education increases, and as types of loans available grow more numerous, so the need for up-to-date information on the administration of educational loan programs becomes critical. Student loan officers in today's institutions are faced not only with a variety of loan programs, each governed by a myriad of regulations, but also with default standards, audit requirements, contracting for billing and collection services, and much more. *Student Loan Programs: Management and Collection* focuses primarily on program administration and management in the context of student loan repayment and collection. By incorporating regulatory requirements with practical suggestions on managing student loan programs, the book provides a framework and a guide for those who are responsible for administering student loan portfolios at colleges and universities.

Student Loan Programs is divided into 13 chapters on specific loan programs and related topics. The book covers four major loan programs characterized by "revolving loan funds" in detail. These "campus-based" programs, administered by postsecondary education institutions, include the Perkins Loan program (encompassing Perkins Loan, National Defense Student Loan, and National Direct Student Loan programs), which emanates from the U.S. Department of Education (ED), and the Health Professions Student Loan and Nursing Student Loan programs, which are offered through the U.S. Department of Health and Human Services (HHS). The publication also offers a brief section on another revolving fund, the Income Contingent Loan program. This campus-based program was recently developed by ED and is initially confined to selected institutions that are participating in an experimental demonstration project through 1992.

Although general requirements for the administration of each of the revolving funds are established by Congress via statute and by each authorizing agency via regulation, postsecondary institutions that participate in any of these programs must disburse loans from funds based on federal and institutional capital contributions, collect the borrowed sums once loans enter repayment status, and return received amounts to the appropriate revolving loan fund account.

Student Loan Programs provides information pertaining to the major federally guaranteed student loan programs that offer assistance to postsecondary students. These programs include the Health Education Assistance Loan, administered by HHS, and the Stafford Loan (formerly called the Guaranteed Student Loan), the Supplemental Loan for Students, PLUS Loan, and the Consolidation Loan programs (collectively known as the guaranteed student loan programs), administered by ED.

Institutions that participate in federally guaranteed student loan programs have more limited administrative responsibilities than they do with the campus-based programs; under the guaranteed student loan programs, institutions generally do not serve as lenders or collectors of the loans their students receive. In recent years, however, as the number of student loans and related federal costs associated with program administration have grown, participating institutions have experienced an increase in the number and complexity of administrative requirements for which they are responsible. In fact, institutions increasingly are being held more accountable for the defaults of student borrowers as federal regulations establish additional requirements based on institutional default rates.

Student Loan Programs offers detailed information regarding several aspects of loan program administration and management, including contracting for loan collection and billing services, the development and implementation of collection programs and collection techniques, fiscal standards, internal control measures, legal issues regarding litigation in the courts and bankruptcy, audits and program reviews, and the regulatory process that governs federal student loan programs.

Student Loan Programs contains five appendices. Appendix A contains sample forms, promissory notes, and other documents associated with student loan programs. Appendix B provides selected federal regulations discussed in the text. Appendix C details statutes of limitations state by state. Appendix D presents a glossary of terms and acronyms used in the text. And Appendix E lists key resources and references for the student loan practitioner.

It is important for institutional student loan managers and collectors—and, indeed, for all personnel engaged in the field or responsible for overseeing student loan programs—to remember that individual institutions successfully administer and manage student loan programs in a variety of ways. It is not the intent of this publication to suggest that there exists a single method that can guarantee "success." Rather, *Student Loan Programs* seeks to identify and describe specific elements and techniques that characterize effective and efficient student loan program management and administration at the institutional level.

It is also important to note that federal regulations governing student loan programs may lack detailed instructions on specific requirements, and, in certain instances, may provide options regarding compliance with particular requirements. In many instances, federal requirements are linked to required outcomes (such as the achievement of a specified program default rate). In these cases, the exact procedures an institution must follow to comply with a requirement are not prescribed. Consequently, institutions must devise their own methods for meeting the requirements of federal student loan programs. *Student Loan Programs* attempts to assist individual institutions in the development and review of their loan programs. The authors and NACUBO hope that the information presented herein will add to the general knowledge in the field of student loan program administration and management, particularly in the area of loan collection.

Another word about federal regulations. It is imperative that all institutional personnel involved in the student loan process be familiar with regulations governing any federal student assistance program offered on their campus and regularly review primary sources of information that cover the regulations. Statutes governing student loan programs frequently are amended by Congress; these changes are eventually implemented in the form of new regulations issued by the appropriate federal agency. Every institution participating in a federal student loan program should incorporate a mechanism for the review of appropriate publications (such as the *Federal Register*) into its administrative procedures so that it can keep abreast of current requirements. In addition, institutions should carefully review all correspondence and notices received from ED and HHS, since both agencies issue explanatory documents and publications that provide additional interpretation and/or clarification of selected requirements for the programs they administer. Institutions also should take advantage of the opportunity to review and comment on proposed regulations, especially those requirements that would impose an administrative or cost burden on the school.

The information provided in *Student Loan Programs* is intended to cover provisions in principal statutes and final regulations related to the student loan programs discussed in the text as of December 31, 1990. This book has been subject to extensive review by a variety of experts drawn from both federal agencies and higher education. Every effort has been made to produce an accurate, reliable, and helpful work. However, as with any publication of this kind, the potential for error or misinterpretation remains. Readers are thus advised to use this book as a guide to, rather than as a definitive statement of, regulations and procedures, and should not act without reference to the federal regulations and, where appropriate, legal counsel.

Chapter 1

Perkins Loan Program

The Perkins Loan program is one of three "campus-based" programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). These programs, named because a participating institution is allocated federal funds for an award year based upon the anticipated needs of its student body, are administered by the U.S. Department of Education (ED). The other two campus-based programs—the Supplemental Education Opportunity Grant and College Work-Study programs—do not offer student loans but provide other forms of financial assistance to eligible students.

The Perkins Loan program offers low-interest, long-term loans through institutional financial aid offices to help needy undergraduate and graduate students pay postsecondary educational costs. The Perkins Loan Fund comprises annual federal allocations and institutional matching contributions. As prescribed by law, the institutional capital contribution must be at least one-ninth of the federal capital contribution. Institutions administer the Perkins Loan Fund (the Fund) on a revolving basis: while loans are being made to students, the Fund is receiving repayments of earlier loans.

Regulations for the Perkins Loan program are provided under 34 CFR 674. These regulations, which are promulgated by the Office of Postsecondary Education of ED, direct the Perkins Loan, National Defense Student Loan, and National Direct Student Loan programs. The National Defense Student Loan program originated in 1958. Amendments to HEA changed the program to the National Direct Student Loan program in 1972; effective with the 1987-88 award year, the program was called the Perkins Loan program. The program is named in honor of the late Carl D. Perkins, former chairman of the House of Representatives' Education and Labor Committee.

Although some rules provided for the Perkins Loan program under 34 CFR 674 apply to all three types of loans, certain requirements are specific to each one. The general term "Perkins Loan program" is applied here to all three loans unless specific requirements are discussed, when individual loans are specified as "Defense," "Direct," and "Perkins." In cases where Defense and Direct Loans are treated similarly, the term "NDSL" is used. Table 1-1 provides a summary of Perkins, Direct, and Defense Loan interest rates.

Table 1-1
Interest Rates for Perkins, Direct, and Defense Loans

Date	Name of Program	Interest Rate
1958-June 30, 1972	National Defense Student Loan	3%
July 1, 1972-June 30, 1981	National Direct Student Loan	3%
July 1, 1981-September 30, 1981	National Direct Student Loan	4%
October 1, 1981-June 30, 1987	National Direct Student Loan	5%
July 1, 1987	Perkins Loan (for first-time borrowers)	5%
July 1, 1987	Perkins Loan/Direct Loan (for continuing borrowers)	5%

In-School Administration

ELIGIBILITY

A student is eligible to receive a Perkins Loan if he or she:

- is a United States citizen or national; is a permanent resident of the United States or is in the United States for other than a temporary purpose and intends to become a citizen or permanent resident; or is a permanent resident of the Trust Territory of the Pacific Islands;

- has a high-school diploma or its recognized equivalent;

- is not enrolled in either an elementary or secondary school;

- has been accepted for enrollment or is already enrolled as an undergraduate, graduate, or professional student;

- has filed a Statement of Educational Purpose and Selective Service Registration Status;

- is maintaining satisfactory progress in the chosen course of study, according to standards and practices of the institution;

- is willing to repay the loan;

- is in need of the loan to pursue a course of study;

- has not borrowed in excess of aggregate maximum loan limits from Title IV programs; and

- has either received a Student Aid Report (SAR) as a result of applying for a grant under the Pell Grant program or received a preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for an SAR with a Pell Grant processor (applies to undergraduates only).

For purposes of determining "need," a student is considered in need if the cost of the student's education at the chosen institution exceeds the expected family contribution as determined by the institution based on its use of the Congressional Methodology formulas included under Part F of Title IV of the HEA Amendments of 1986. A student who is pursuing a course of study by direction of a religious community, society, or order, or who receives support and subsistence from a religious community, society, or order, is considered to have no financial need.

An institution must make loans reasonably available to all eligible students to the extent of available funds, and must give priority to students with exceptional financial need. The institution must develop and maintain procedures for implementing this priority, document its selection criteria, and have the selection criteria available for public inspection. The institution may not, as a matter of policy, exclude any category of eligible students such as all graduate, all half-time, or all independent students.

An institution may not make a loan to a student who is unwilling to repay the obligation or has not certified that he or she owes no refund on any previous Title IV award. A default on a previous loan is also evidence that a student is unwilling to repay a loan. Thus, an institution has a basis for denying a loan to a student who has defaulted on a previous loan. If a student has made satisfactory arrangements to repay a defaulted loan and signed a repayment agreement, the institution may award a Perkins Loan to the student.

LOAN MAXIMUMS

Regulations governing the Perkins Loan program do not restrict the amount that may be loaned per academic year. However, the aggregate of all loans for all years to one student from the Perkins Loan Fund may not exceed:

- $4,500 for a student enrolled in a vocational program or for a student who has not successfully completed two academic years of a program of education toward a bachelor's degree;

- $9,000 for a student who has successfully completed two academic years of a program of education leading to a bachelor's degree and has achieved third-year status but has not received a degree, including any Perkins Loans or NDSLs made to that person for his or her first two years of study; and

- $18,000 for any graduate or professional student, including any Perkins Loans made to a person before he or she became a graduate or professional student.

These amounts are lifetime limits—repayment does not reinstate new limits. For instance, a student who borrowed $18,000 while earning a bachelor's and a master's degree would not be eligible for a new loan on entering a doctoral program, even if repayment had been made of a portion or all of the $18,000 previously borrowed.

A student who borrowed $9,000 while earning a bachelor's degree would be ineligible for another loan if he or she later enrolled in a program for a second undergraduate degree. However, if the student borrowed only $5,000 while enrolled for the first bachelor's degree, he or she would be eligible for a loan of up to $4,000 while studying for the second undergraduate degree. A student who has already borrowed $4,500 cannot borrow additional funds for a program of study that does not lead to a bachelor's or higher degree.

MAKING A LOAN

Perkins Loan regulations require that an institution establish a system of internal checks and balances to ensure that no office can both authorize payments and disburse funds to students. Certain functions, such as determining student eligibility, preparing aid packages, notifying students of the amounts and types of aid offered, and preparing loan notes, are typically handled by the financial aid office. Disbursement of funds is usually handled by the business office.

For any loan program to operate properly, it is important that every person involved in administering the program understand each office's responsibilities. A precise job description for each function should be on file at the institution. The financial aid office and the business office must work together in other aspects of the Perkins Loan program, such as sharing information to support loan collection and preparing the annual "Fiscal Operations Report and Application to Participate" (FISAP).

Due diligence. Every institution must exercise due diligence in collecting Perkins Loans by complying with federal regulations. On a practical level, due diligence encompasses all the activity at an institution that is performed in order to comply with due diligence regulations provided under 34 CFR 674 Subpart C. In exercising this responsibility, each institution must keep the borrower informed of all changes in the Perkins Loan program that affect his or her rights and responsibilities, and promptly respond to all inquiries from the borrower or an endorser. Institutions also must attempt to recover all money owed to the Fund. In order to meet the due diligence requirements, institutions must:

- provide pre-loan counseling;
- execute a binding promissory note;
- conduct exit interviews;
- notify the borrower during the grace period;

- bill the borrower;
- send past-due notices and a final demand letter (if necessary); and
- conduct collection procedures and litigation (if necessary).

Pre-loan counseling. Before a Perkins Loan can be disbursed, the borrower must sign a promissory note and the institution must furnish the borrower with certain information. The school must inform each student about his or her rights and responsibilities under the Perkins Loan program, that the loan may be used only for educational expenses, and that he or she must repay it. The institution also must furnish students with the following information prior to the first disbursement:

- the name of the school and the address where communications and payments should be sent;
- the principal amount of the loan, the interest rate, the total cumulative balance the student will owe, and an estimate of the monthly payment needed to repay that amount;
- the date when the borrower must begin repayment and when he or she must begin paying the interest that accrues;
- the annual and cumulative maximum amounts a student may borrow and the maximum and minimum repayment terms;
- a complete list of charges connected with making the loan, including whether these charges are deducted from the loan or the student must pay them separately;
- an explanation of the costs that may be assessed the borrower in collecting the loan, such as late charges, collection charges, and litigation costs;
- a summary of deferment and cancellation provisions, including a brief notice about the Department of Defense program for repaying educational loans based on specified military service;
- a definition of default and its consequences, including a statement that a default will be reported to a credit bureau or credit reporting agency;
- an explanation of the effect of accepting the loan on the borrower's eligibility for other student financial aid;
- an explanation of refinancing and loan consolidation options; and

- a reminder that the borrower can repay the entire balance and interest at any time, without penalty.

This information must be provided to borrowers in writing as part of the application material, as part of the promissory note, or on a separate form. Although the information can be mailed to borrowers, it is preferable for a counselor to meet with a borrower to answer questions and emphasize the borrower's responsibility for loan repayment. This initial counseling session can benefit the institution since it can be used to obtain important information from borrowers that may be used later during the loan repayment period, such as:

- borrower's name, current address, and Social Security number;
- previous school(s) attended;
- expected date of graduation;
- borrower's driver's license number;
- telephone numbers of the borrower and his or her parents or any endorser;
- parents' or any endorser's permanent address;
- spouse's name and address;
- spouse's employer; and
- names and addresses of two or three personal acquaintances.

This information can facilitate the location of borrowers who leave school without notice or do not attend the exit interview.

Disbursement. The method an institution chooses to disburse loans likely will be related to the number of loans being disbursed and the most efficient, cost-effective method to coordinate the entire disbursement process. Some institutions disburse funds by check, others credit student accounts. Regardless of the size of an institution or the method it uses to disburse, critical information regarding terms of the loan must be included either in the promissory note itself or during the disbursement process.

The signed promissory note signifies the beginning of the loan process at many institutions. An error in the note or in the completion of the note is extremely serious. Certain errors can negate the loan in a court of law. It is extremely important that all institutions use the most recent note approved by the Secretary of the Department of Education (ED Secretary). Any changes to the promissory note must be approved by the ED Secretary.

Perkins Loan program promissory notes are provided as appendices under 34 CFR 674. Any student with an outstanding loan balance on July 1, 1987, under the Direct Loan program continues to borrow under the Direct Loan program note. If a student had no loan balance as of July 1, 1987, he or she is considered a Perkins Loan borrower. There are separate notes for Direct and Perkins Loans; in addition, each program has two notes: one for borrowers attending at least half-time and one for borrowers attending less than half-time. The most recent substantive changes to the promissory notes occurred as a result of the HEA Amendments of 1986. Institutions should determine on an annual basis if legislative or regulatory changes have been made to the notes. Institutions generally are informed about changes through *Federal Register* notices or "Dear Colleague" letters.

Using two sets of notes avoids confusion over which provisions apply to which borrowers. Once an institution has categorized a student as a Perkins or Direct borrower, the provisions of the appropriate promissory note will continue with that borrower for the life of the loan.

Perkins Loan notes contain three provisions that are also found in Direct Loan notes.

- The late charge that a school must assess a borrower who fails to pay all or part of an installment when due may not exceed 20 percent of the borrower's monthly, bimonthly, or quarterly payment. The school must establish a charge based on reasonable expenses incurred in billing the borrower. (Schools were "authorized" to assess "late charges" beginning January 1, 1986; they were "required" to assess late charges beginning July 1, 1987.)

- If the amount of the borrower's monthly or other payment is not a multiple of $5, the school may round each payment to the next highest $5 increment.

- The school must charge a borrower for the contingent fees charged by a collection firm. These fees are considered part of "reasonable collection costs," for which the borrower is fully liable.

There are two accepted methods of disbursement: issuing a check to the borrower for the amount of the loan and crediting the loan to the student borrower's account. If the institution chooses to issue the check to the borrower, it is best to make the check payable to both the borrower and the institution, thereby requiring the borrower's signature. This procedure eliminates any questions if the borrower later states that he or she never received the funds. By making the check payable to the institution as well as to the borrower, the institution can ensure that the funds are used to pay tuition, fees, room and board, and similar educational costs. This method also leaves a clear audit trail. Whatever disbursement method an institution chooses, it must retain all canceled checks and vouchers as evidence of payment. Whether the student receives a check or account credit, he or she must sign for each advance of funds on the promissory note.

A Perkins Loan must be advanced to the borrower in equal installments unless the student incurs uneven costs during an academic year or needs additional funds in a particular payment period. Documentation of costs should be included in the student's file. For institutions using semesters, trimesters, or quarters, the following formula is used to determine the amount to advance each payment period for a student attending for a full academic year:

$$\frac{\text{Perkins}}{\text{N}} = \frac{\text{total Perkins award for the academic year}}{\text{number of periods in the academic year}}$$

The amount of advance of the total Perkins award to a student attending for less than a full academic year is determined as follows:

$$\frac{\text{Perkins}}{\text{R}} = \frac{\text{total Perkins award for the academic year}}{\text{number of periods remaining in the academic year}}$$

Institutions not on a semester, trimester, or quarter system must advance funds to the student at least twice during the academic year: at the beginning of the year and again at the midpoint. Normally, schools may advance no more than one-half of the loan before the midpoint of the academic year. Schools must advance funds at least twice during any eligible six-month training program.

If an error is discovered in a promissory note, the institution should obtain legal advice on the appropriate action to take. The institution, student, and, if applicable, an endorser should sign or initial all approved changes in the note.

All signed promissory notes must be maintained in a locked, fireproof container. When a loan has been repaid, the institution should mark the note "Paid in full," have it certified by an officer of the institution, and give the original note to the borrower. The institution must keep a copy of the "Paid in full" note for at least five years after the date the loan is repaid in full. The institution also must keep all financial and repayment records related to a loan for five years after the entire amount of the loan is repaid in full, canceled, or assigned to ED. However, if a program review or audit is underway or expected, the institution must maintain the documents until that program review or audit has been resolved.

Types of notes. A school can choose to make a promissory note "open-ended," "closed-ended," or "limited." On an open-ended promissory note, the borrower signs the note once. Each disbursement is listed on an attached schedule of advances that is signed and dated at the appropriate time.

A new note is signed only if the program regulations change. When program regulations change, the old note, with its advances, is closed and a new note, with a new schedule of advances, is required.

Closed-ended notes are separate promissory notes for each advance. If a student signs for an advance each semester in a four-year institution, the borrower would have eight separate promissory notes. Institutions that decide to use closed-ended notes are still required to include a schedule of advances that must be signed by the borrower.

A limited note covers one academic year. The note is executed annually and each advance is signed for and dated.

Optional provisions. A school may include certain optional provisions in its promissory notes. If an optional provision is not included in a note, it cannot be used in loan collection.

- Under a 10-year repayment plan, if a borrower's monthly payments would be less than $30, a school may require a minimum repayment of $30 per month (or the equivalent amounts in bimonthly or quarterly installments).

- A note can be "signed under seal" if a state has such a provision. If the school inserts the sentence "This note is signed as a sealed instrument" just above the borrower's signature and inserts the word "seal" next to the borrower's signature, the statute of limitations on the loan may be extended beyond the usual amount of time (statutes of limitations vary by state—see Appendix C). If an institution includes such a provision, the borrower is expected to continue paying on the note and the school is expected to continue collection procedures for a longer period than usual. If the "seal" references are not included in the note, the normal statute of limitations in a state will apply.

- A school may include a provision stating that it will not release a student's academic transcript if the student's loan is delinquent (a delinquent loan is a loan that is past due).

- A "confession of judgment" provision will allow a school to attach the borrower's assets immediately upon default. Recognition of this provision varies from state to state. Institutions should consult with their attorney before including this provision.

It is necessary for schools to review the promissory notes they offer and ensure that the notes comply with federal regulations and that each note includes any necessary options. Schools should consult legal counsel if they want to include options in their notes.

Assignment or transfer. A Perkins Loan program promissory note may be assigned or transferred to:

- an institution participating in the Perkins Loan program;
- the federal government; or
- an institution to which the borrower has transferred (if the institution participates in the Perkins Loan program or is eligible to participate and is approved by ED to receive promissory notes).

An institution that transfers a promissory note to another institution appoints all rights to any amount collected to the institution that accepts responsibility for the note. For loans assigned to the federal government, the institution assigns rights to a promissory note without recompense and any amounts subsequently collected are deposited in the U.S. Treasury General Fund.

RECORD MAINTENANCE

The institution must retain accurate and comprehensive records for each Perkins Loan borrower. An effective method includes preparing a file folder for each borrower. Notes, address changes, deferment and cancellation forms, correspondence, and any other information pertaining to that borrower should be placed in the file, which must be maintained until five years after the loan is paid in full. Once the promissory note is paid in full, original records and documents may be replaced with microfilmed copies.

Perkins Loan regulations require an institution to coordinate information in institutional records in various offices, including the registrar's, admissions, financial aid, business, and alumni offices. Since ED works with the institution, no one office in the institution may refuse to provide information regarding a student's whereabouts to the financial aid or business office. Coordination of information within the institution is not a violation of provisions of the Family Education Rights and Privacy Act. The purpose of such coordination is to determine if the student is currently enrolled, is about to graduate, or has already left school. Effective record checks require matching "in-school" loan accounts with the registrar's records each term or semester to determine if the borrower has left without an exit interview.

EXIT INTERVIEW

As noted previously, the due diligence regulations require institutions participating in the Perkins Loan program to conduct an exit interview with each Perkins Loan borrower. In preparation for the exit process, the office responsible should develop a plan that includes, at a minimum, the requirements specified in the applicable regulations. A written copy of the plan and related procedures should be shared with, and ideally agreed upon, by all campus offices involved in the student aid delivery system. It is extremely important that at the very least the financial aid office, the business office, and, if separate, the student loan collection department be involved in this process.

Who conducts the interview. Regulations do not designate the person or office responsible for conducting Perkins Loan exit interviews. The National Association of College and University Business Officers recommends that these interviews be conducted by the office responsible for collecting loans, since the interview presents the opportunity for the borrower to meet campus personnel who will carry out collection procedures and work with the borrower on repaying the loan. It is also important that the individual who conducts the interview have full knowledge of the Perkins Loan program requirements to ensure that the borrower leaves the institution clearly understanding the actions he or she is expected to take to honor the terms of the promissory note.

In general, the office responsible for conducting exit interviews should determine in advance what information will be communicated to the borrower; when the interview will be conducted; who will be responsible for conducting the interview; and how different kinds of interviews (that is, individual, group, or correspondence) will be conducted.

Why the interview is important. The exit interview can serve as a valuable collection tool because it provides the institution with a solid information base on which to manage and prevent delinquencies and defaults. The interview also presents an opportunity to inform the borrower about the repayment process and emphasize the importance of the repayment obligation.

What ED requires. Institutions are permitted to conduct either individual or group exit interviews. The interview must be conducted before the borrower leaves the institution or when the student's status changes to less than half-time. ED requires that the institution restate for the borrower the terms and outstanding balance of the loan held by the institution and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution must also explain to the borrower the consequences of default, including, at a minimum, possible referral to a collection firm, reports to a credit bureau, and litigation.

According to regulations, the exit interview must include an explanation of the borrower's rights and responsibilities and a disclosure of specific information to the borrower. Regulations also provide information on other actions that the school must take at the time of the interview and steps that the institution must take if the exit interview does not transpire. The specific requirements are found under 34 CFR 674.42.

Rights and responsibilities. The institution must explain to the student the following rights and responsibilities of a Perkins Loan borrower:

- the borrower's responsibility to inform the institution immediately of any change of name, address, or telephone number;

- the borrower's right to deferment, cancellation, or postponement of repayment, and the procedures for filing for those benefits; and

- the borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

Institutional disclosures. As part of the exit interview, the institution must disclose the following information and include it in the promissory note or in a written statement provided to the borrower:

- the name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;

- the name and address of the party to which payments should be sent;

- the estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin;

- the stated interest rate on the loan;

- the repayment schedule for all loans covered by the disclosure, including the date the first installment payment is due and the number, amount, and frequency of required payments;

- an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to repay all or part of the loan at any time without penalty;

- a description of the charges imposed if the borrower fails to pay all or part of an installment when due;

- a description of any charges that may be imposed as a consequence of default; and

- a total sum of interest charges that the borrower will pay on the loan pursuant to the projected repayment schedule.

Other actions to be taken during the exit interview. The due diligence regulations require institutions to accomplish the following tasks during the exit interview:

- the borrower must sign the repayment schedule;

- the institution must provide the borrower with a copy of the signed promissory note and the signed repayment schedule; and

- the institution must retain signed copies of the note and repayment schedule in its files.

***When a borrower misses the exit interview*.** ED also prescribes specific actions that an institution must take to contact a borrower who has failed to attend the exit interview or who leaves the institution before the interview takes place. The institution must provide the borrower, either in person or by mail, with the information that would have been provided at the exit interview, that is, an explanation of the borrower's rights and responsibilities and the information about the promissory note and repayment in accordance with the details listed above. In addition, the school must provide a copy of the promissory note and two copies of the repayment schedule with a request that the borrower promptly sign and return one of the schedules to the institution.

STUDENT LOAN CONSOLIDATION AND REFINANCING

Loan consolidation is a concept under which a borrower with loans from more than one lender may contract with one of those lenders or another lender to establish a "consolidated" loan, with one interest rate and one repayment period.

Laws enacted in 1985 and 1986 authorized the Student Loan Marketing Association (Sallie Mae), state agencies, and most other eligible Stafford lenders to enter into agreements with the ED Secretary or a guarantee agency for the purpose of consolidating Stafford Loans, Federal Insured Student Loans (FISLs), PLUSs to students, Supplemental Loans to Students (SLS), Perkins Loans, and Health Professions Student Loans of eligible student borrowers. Other federal student loans, such as Nursing Student Loans and Health Education Assistance Loans, as well as institutional loans are not eligible for loan consolidation. Consolidated loans are insured against loss of principal and interest to the lender by the ED Secretary or by the guarantee agency.

To be eligible for a consolidated loan, a borrower must meet the following criteria at the time of applying for the loan. He or she must:

- have a total outstanding indebtedness of $5,000 or more under the covered loan programs;

- be in repayment status or in a grace period preceding repayment;

- not be more than 90 days delinquent on any of the loans being considered for consolidation; and

- have no other consolidation loan applications pending.

It is important to note that PLUSs to parents may not be consolidated. Prior to October 17, 1986, graduate, professional, and independent undergraduate students could borrow PLUSs. In 1986, the HEA was amended to restrict PLUS borrowing to parents only.

The interest rate on a consolidation loan is the weighted average of the rates on the loans being consolidated, rounded to the nearest whole percentage point, but not less than 9 percent. A borrower must first apply for a consolidation loan from a lender that holds one of the outstanding loans being consolidated. If none of the holders of the student's loans will make the consolidation loan, the borrower may apply to another lender.

Repayment of consolidation loans may be based on graduated or income-sensitive schedules, and may be extended over a 10- or 25-year period, depending on the amount of indebtedness and the types of loans consolidated.

Borrowers also should be aware of other refinancing options, if they have multiple loans. The HEA Amendments of 1986 encourage the refinancing of student loans to facilitate debt management. Outstanding, fixed-rate SLSs and PLUSs made before July 1, 1987, may be refinanced to secure combined payment, or to obtain the new variable interest rate (the latter option requires a new loan with a new promissory note and loan disclosure statement). If the lender denies a borrower's request for refinancing, the borrower may seek refinancing from another lender.

Institutions must notify borrowers of the availability of loan consolidation and refinancing during pre-loan counseling and again at the exit interview. The borrower should be advised to review loan deferment provisions, repayment terms, and refinancing and consolidation options before loan repayment begins. The student should be encouraged to direct questions concerning these options to his or her lender(s).

The borrower should be urged to maintain copies of key documents (for example, loan applications, promissory notes, loan disclosure statements, repayment schedules, requests for deferment, and related correspondence) as well as a record of payments on loans to facilitate the repayment process. A discussion of loan consolidation and refinancing options is provided in ED's "Dear Colleague" letter GEN-86-97.

Grace Period Administration

The "grace period" is the time interval during which a borrower does not have to begin or resume repaying a loan. During the grace period, interest does not accrue and installments need not be paid. An "initial grace period" occurs immediately after a period of enrollment, and immediately precedes the date the first repayment installment is due.

The initial grace period for a Perkins Loan is the nine-month period following the date the borrower ceases to be enrolled at least half-time. The initial grace period for a Direct Loan made after October 1, 1980, is the six-month period following the date the student ceases to be enrolled at least half-time. The initial grace period for a Direct Loan made before October 1, 1980, and for a Defense Loan is nine months.

A "postdeferment grace period" is the period of six consecutive months that immediately follows the end of certain periods of deferment and precedes the date on which the borrower must resume loan repayment. For all Perkins Loans (as well as Direct Loans made on or after October 1, 1980), a borrower is entitled to the six-month grace period after each deferment that applies to those loans, with the exception of the deferment for hardship. Neither the deferment nor the grace period is included in determining the borrower's 10-year repayment period. Loans made before October 1, 1980, do not have any postdeferment grace periods.

GRACE PERIOD NOTIFICATIONS

Specific requirements associated with borrower contacts during initial and postdeferment grace periods are provided in the Perkins Loan program regulations under 34 CFR 674.42. An institution must contact the borrower three times within the initial grace period for loans with a nine-month initial grace period. This requirement applies to borrowers with loans made before October 1, 1980, and loans made for periods of enrollment beginning after June 30, 1987, and to borrowers with no outstanding balance on any Defense, Direct, or Perkins Loan made prior to July 1, 1987. For other loans, those with a six-month initial or postdeferment grace period, the institution is required to contact the borrower twice during the grace period.

The first required contact with the borrower must be made by the institution 90 days after the commencement of any grace period. ED mandates that the borrower be reminded of his or her responsibility to comply with the terms of the promissory note and requires that the contact include information about the total amount remaining outstanding on the loan account (including principal and interest accruing over the remaining life of the loan) as well as the date and amount of the next required payment.

The institution is required to contact the borrower a second time 150 days after the beginning of the grace period, to notify the borrower of the date and amount of the first required payment.

The institution is required to contact any borrower with a nine-month grace period a third time, or 240 days after the beginning of the grace period, and inform him or her about the due date and amount of the first payment on the loan.

Billing Administration

ED uses the term "billing procedures" to include the series of actions routinely performed by the institution to notify borrowers of the date payments are due and of overdue payments, and to demand payment of overdue amounts. Prompt, clear, and accurate bills that provide sufficient information for the borrower to understand fully the status of his or her account are probably the single most important factor in keeping accounts current. The billing procedures for the Perkins Loan program are outlined under 34 CFR 674.43.

If an institution uses a coupon payment system, it must send the coupons to the borrower at least 30 days before the first payment is due. If coupons are not used, an institution must send the borrower a written notice giving the name and address of the party to which payments are to be sent and a statement of the account at least 30 days before the first payment is due, and a statement of the account at least 15 days before the due date of each subsequent payment.

The billing statement form should provide sufficient information to give the borrower a full description of the status of his or her account. It also should be designed to allow the borrower to keep the information portion but return the other half with the payment. In designing a billing statement, the institution should remember that the more information provided, the less chance the borrower has to question it. Use of a window envelope helps ensure that a borrower will return the institution's portion of the statement to the correct address.

OVERDUE NOTICES

If an institution does not receive a request for cancellation, deferment, or postponement from a borrower by the due date of a payment, the institution must contact the borrower and demand payment according to the following schedule.

First overdue notice. An institution must contact a borrower in writing within 15 days after a missed payment. It is advisable to inform the borrower at this time if the institution will withhold all further services such as academic transcripts, letters of recommendation, alumni materials, publications, and placement information until the account has been brought current or satisfactory arrangements have been agreed upon.

Second overdue notice. If the borrower does not satisfactorily respond to the first overdue notice, the institution must send a second overdue notice within 30 days after the first overdue notice is sent. The borrower is now 45 days past the missed payment due date.

Final demand letter. A final letter must be sent within 15 days of the second past-due notice, or at 60 days past due. The final demand letter describes the specific action that the institution will take if payment or requests for deferment, postponement, or cancellation are not received. Regulations require institutions to allow 30 days from the date of the letter for the borrower's response before taking any proposed action. The final demand letter must inform the borrower that failure to respond will result in the school referring the account for collection or litigation and reporting the default to a credit bureau.

If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures. If the contact indicates that the situation calls for a renegotiated repayment schedule or a deferment, the institution should make appropriate arrangements. Although schools are not required to telephone a delinquent borrower until after the final demand letter is issued, calls made during the billing cycle often prove effective in bringing the borrower back into repayment status.

In many cases, the threat of referring the loan to a collection agency, the school's collection staff, or an attorney will prompt the borrower to respond. Once an institution has informed the borrower of the action it is going to take, it must not hesitate to act. It is imperative that a school carry out its proposed collection program.

A final demand letter may be sent at 15 days past due if the borrower's repayment history has been unsatisfactory—for example, if the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter.

If an institution plans to accelerate a loan (make the full amount, including interest and any applicable late charges, due and payable immediately), that fact can be included in the final demand letter. Once a loan is accelerated, the institution must send the borrower a notice of the impending action at least 30 days before it takes the action. Billing procedures and collection activities do not require acceleration, but a loan must be accelerated before it can be assigned to ED.

If a borrower does not respond satisfactorily to the final demand letter, an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser.

The Perkins Loan/NDSL Default Reduction Assistance Program is a voluntary program offered by ED's Office of Student Financial Assistance in Washington, D.C. This program replaces the NDSL default prevention programs, which were operated by ED regional offices. Through this program, ED offers a series of three letters that will alert defaulted borrowers of the serious consequences of continued failure to repay their loans. These letters advise defaulters to contact their lending institution and make satisfactory arrangements for the repayment of their debts. ED is responsible for sending letters to the borrowers upon request by the institution. To receive information on this program, an institution should contact ED directly.

Address searches. If mail sent to the borrower is returned, the institution must take all reasonable steps to locate the borrower. The institution must (1) review records in all appropriate institutional offices for the correct address; (2) review telephone directories or make inquiries of information operators in the locale of the borrower's last known address; and (3) use ED's skip-tracing service. In order to obtain address information through the ED/IRS skip-tracing program, an institution must submit a "Safeguard Procedure Report" to ED and comply with other federal agency requirements intended to limit the institution's use of the address to collection of the loan and protect the borrower from unlawful disclosure of the information for other purposes.

If the above steps fail, the institution must either use its own personnel to attempt to locate the borrower by employing and documenting efforts comparable to commonly accepted skip-tracing practices, or refer the account to a firm that provides these services. If the borrower cannot be located through the address search or skip-trace activities, the institution must continue to make reasonable attempts to locate the borrower at least twice a year until litigation is barred under the applicable statute of limitations, the account is assigned to the United States, or the loan is written off. These requirements are stated under 34 CFR 674.44.

PENALTY AND LATE CHARGES

If institutions used the optional language in Defense or Direct promissory notes issued before January 1, 1986, they can assess penalty charges to the borrower of $1.00 the first month and $2.00 for every month thereafter that payment is past due, in accordance with Table 1-2. Payment received for penalty charges should be deposited into the Perkins Loan Fund.

Late charges, not to exceed 20 percent of the monthly, bimonthly, or quarterly payment, must be charged to a delinquent borrower who has a promissory note issued after January 1, 1986. Late charges are based on average or actual costs incurred while handling past-due accounts prior to referring them for collection. The specific costs that should be incorporated into late charges are identified in the regulations under 34 CFR 674.43(b)(2). The application of late charges to a student's account and related procedures are addressed in the same section. An institution is only permitted to waive late charges if the borrower repays the full amount of all past-due payments on a loan.

It is important to note the distinction between late charges and penalty charges. Penalty charges are charged to the borrower for as long as the loan is delinquent. Late charges (a percentage up to 20 percent of the monthly payment) are charged to the borrower for a period of months, determined by the

Table 1-2
Schedule of Penalty Charges

	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Total per Payment
Monthly							$ 1
1st past due	$1						
2nd past due		$1 + $2					3
3rd past due			$3 + $2				5
4th past due				$5 + $2			7
5th past due					$7 + $2		9
6th past due						$9 + $2	11
Total all payments							$36
Bimonthly							
1st past due	$3						$ 3
2nd past due			$3 + $3				6
3rd past due					$6 + $3		9
Total all payments							$18
Quarterly							
1st past due	$6						$ 6
2nd past due				$6 + $6			12
Total all payments							$18

institution, up to 180 days delinquent. Any further charges to the borrower would be considered collection charges.

Any charges incurred after a loan is referred for collection or litigation are not considered late charges but are treated separately as collection costs. Collection costs, which may be charged to the Perkins Loan Fund, are covered under a separate section of the regulations and are discussed later in this chapter.

DEFERMENTS

Borrowers in the Perkins Loan program are entitled to have their loan repayment deferred under certain circumstances prescribed by law. It is the borrower's responsibility to submit, on a timely basis, a request for deferment. Deferments are granted by the institution. A borrower must provide the institution with a written request, usually by filing a form provided by the institution (or its agent) with documentation required by the institution. The borrower must file a request for deferment at least once a year for as long as the deferment can be claimed. In addition, the borrower is responsible for reporting any change in deferment status to the institution immediately.

Upon receipt of a request for deferment, the institution must approve or disapprove any deferment form, make certain it is properly completed, and determine that the requested deferment does not exceed the maximum length of time. ED regulations stipulate that the institution make a record of whether or not the deferment was granted and maintain in its files the forms along with any required documentation.

If the borrower fails to meet the institution's requirements for filing for a deferment, the institution may declare the loan to be in default, and may accelerate the loan. However, the institution may grant a borrower a deferment after it has declared a loan in default and/or accelerated it under the following condition. First, the institution must require the borrower to execute a written repayment agreement on the loan. Second, the school may also require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which it determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

If a borrower demonstrates that he or she retained in-school status or was within the initial grace period during some or all of the period for which a deferment is requested, the institution must redetermine the date on which the borrower was required to begin loan repayment, and deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period began.

An example of a "Request for Deferment of Repayment" is provided in Appendix A. Some deferment provisions are common to Defense, Direct, and Perkins Loans, but other provisions differ. Regulations addressing specific deferments for these loans are provided in the campus-based regulations under 34 CFR 674.34-36. Deferment procedures are outlined under 34 CFR 674.37. Table 1-3 summarizes the types of deferments that are allowed.

Loans made before October 1, 1980. There are several types of deferment allowed on Defense and Direct Loans granted prior to the 1980 HEA Amendments.

- *Student deferment*. A borrower, at an institution of higher education or a comparable institution outside the United States approved for this purpose by the Secretary of ED, may defer repayment if he or she is carrying at least one-half the normal, full-time academic work load as determined by the institution. Students are entitled to receive a deferment for periods of enrollment up to 12 months; additional deferments based on student status are available as long as the borrower meets the criteria. The student is responsible for knowing what period is defined and when the next request form or payment is due.

  On Defense Loans only, the institution may permit the borrower to defer payment of principal and interest (although interest shall continue to accrue) for a total of three years for which the borrower is attending an institution of higher education as a less-than-half-time regular student. The maximum 10-year repayment period of a loan shall be extended by the

Table 1-3
Deferments for Perkins and Direct Loans

Student Is Eligible to Defer Repayment:	Direct Loan Made after 10/1/80	Direct Loan Made Before 10/1/1980	Perkins Loan (After 6/30/87)
While enrolled at least half time[a]	Yes* 12 months	Yes 12 months	Yes* 12 months
While a member of U.S. Army, Navy, Air Force, or Coast Guard	Yes* Up to 3 years	Yes Up to 3 years	Yes Up to 3 years
While a Peace Corps Volunteer or VISTA volunteer	Yes* Up to 3 years	Yes Up to 3 years	Yes* Up to 3 years
While a full-time volunteer for a tax-exempt organization in service comparable to Peace Corps or VISTA	Yes* Up to 3 years	No	Yes* Up to 3 years
While an officer in the Commissioned Corps of the U.S. Public Health Service	Yes* Up to 3 years	No	Yes* Up to 3 years
While temporarily totally disabled or unable to attend school or work because caring for temporarily totally disabled spouse/dependent	Yes*[b] Up to 3 years	No	Yes*[c] Up to 3 years
While on full-time active duty as a member of the NOAA Corps	No	No	Yes* Up to 3 years
While student is a mother of preschool-age children and is going to work or back to work at salary no more than $1.00 above the minimum hourly wage	No	No	Yes* Up to 1 year
During a period of hardship to the borrower, as determined by the school**	Yes	Yes	Yes
While enrolled less than half time	No	No[d]	No

Notes:

[a] Borrower who is serving in a medical internship or residency program is not eligible for this "in-school" deferment, but is eligible for the regular internship or residency deferment described below.

[b] Spouse only.

[c] Spouse or other dependent.

[d] Deferments for Defense Loans differ from deferments for Direct Loans made before October 1, 1980, only in that Defense Loans allow deferments of up to three years for students enrolled less than half time.

* This deferment is followed by a six-month grace period before repayment begins; during the grace period, principal need not be paid and interest does not accrue.

** Principal may be deferred, but interest continues to accrue.

Source: U.S. Department of Education, *Federal Student Financial Aid Handbook, 1990-91*, pp. 6-39.

length of the student deferment only. The borrower's next payment would be due at the regularly scheduled time following the completion of the deferment.

- *Military deferment.* A military deferment is allowed for a period not in excess of three years when the borrower is a member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard. Members of the National Guard or the Armed Forces Reserves do not qualify for military deferment unless they are attached to an active unit.

- *Peace Corps deferment.* Deferment is allowed for a period not in excess of three years when the borrower is serving as a volunteer with the Peace Corps.

- *VISTA deferment.* Deferment is allowed for a period not in excess of three years during which time the borrower is a VISTA volunteer under Title I-Part A of the Domestic Volunteer Act of 1973 (Action programs).

- *Hardship deferment.* An institution also may permit a borrower to defer payments of principal and interest if the school determines this is necessary to avoid hardship; that is, the borrower is facing a prolonged period of illness or unemployment. Again, interest will continue to accrue.

Loans made after October 1, 1980, and before July 1, 1987. The deferments mentioned above for Direct Loans also apply to loans made after October 1, 1980, and before July 1, 1987. Except for internships and hardships, a six-month grace period is allowed after the completion of deferments on loans granted after October 1, 1980. Additional deferments available to Direct Loans borrowers follow:

- *Public Health Service deferment.* A borrower who is an officer in the Commissioned Corps of the U.S. Public Health Service may be granted a deferment. Deferment is limited to three years.

- *Volunteer service deferment.* A volunteer service deferment applies to service in a tax-exempt organization that the Secretary of ED has determined to be comparable to service in the Peace Corps or VISTA under the Domestic Volunteer Act of 1973. The organization must be tax exempt under Section 501(c)(3) of the Internal Revenue Code. The borrower must provide service to low-income persons and their communities to assist them in eliminating poverty and poverty-related conditions; cannot be paid more than Peace Corps or VISTA program volunteers; cannot be involved in religious activities as part of the duties; and must agree to serve full-time for at least one year. This deferment is limited to three years.

- *Temporary total disability deferment.* If the borrower is unable to secure employment because he or she is temporarily totally disabled, or must provide care to a spouse who is temporarily totally disabled, the borrower is entitled to deferment. "Temporarily totally disabled" is defined in the regulations under 34 CFR 674(c)(5). A sworn affidavit from a qualified physician is required to grant this kind of deferment; the maximum deferment period is three years.

- *Internship deferment.* Borrowers serving eligible internships as defined by ED may receive a deferment for up to two years. To obtain this kind of deferment, a borrower must provide the institution with certification as prescribed by ED. Examples of professional internships that qualify for deferment include internships in medicine; osteopathic medicine; veterinary medicine; chiropractic medicine; dentistry; optometry; public health administration; pharmacy; podiatry; clinical psychology; engineering; prosthetics; marriage, family, and child counseling; speech, pathology, and audiology; certified public accountants; architecture; dietics; physical therapy; clinical pastoral education residency; music therapy; medical technology; occupational therapy; orthotics; interior design; psychodrama; sociometry; and psychotherapy.

The maximum 10-year repayment of a loan shall be extended by the length of the deferments mentioned above. The borrower's next payment would be due at the regularly scheduled time following the completion of the deferment, plus the postdeferment grace period of six months (except for internships and hardships).

For loans made on or after October 1, 1980, an institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum if the school determines the borrower will be a "low-income individual" (as defined by ED) during the course of the repayment period. Under this circumstance, the institution may adjust the repayment schedule to reflect the income of that individual. In addition, the school must review the borrower's status each year and appropriately adjust the repayment period if the borrower no longer qualifies as a low-income individual.

Loans made on or after July 1, 1987. The Perkins Loan program provides all deferments mentioned for Direct Loans above and adds the following.

- *NOAA deferment.* Full-time active duty in the National Oceanic and Atmospheric Administration (NOAA) Corps carries a maximum three-year deferment.

- *Maternity/parental care deferment.* A deferment not to exceed six months can be granted for parental leave for an unemployed borrower who interrupts a period of at least half-time enrollment due to pregnancy, care of a newborn child, or care of an adopted child. However, because this deferment runs concurrently with the postdeferment six-month grace period, for practical purposes this deferment does not exist.

- *Working mother deferment.* A deferment not to exceed 12 months can be granted for a borrower who is a mother with preschool-age children, has just entered or reentered the workforce, and is compensated at a rate not exceeding $1.00 over the minimum hourly wage established by Section 6 of the Fair Labor Standards Act of 1938.

All deferments above, for loans made after July 1, 1987, allow a six-month grace period after the completion of the deferments (note the different treatment given internship deferments for Direct Loans versus Perkins Loans).

Medical internship and residency program deferments. Effective January 1, 1990, borrowers carrying at least one-half the normal full-time academic workload while serving in a medical internship or residency program ceased to qualify for an internship deferment. This exclusion does not apply to any portion of a deferment period completed prior to January 1, 1990.

The term "medical internship" is limited to internships or residencies required of doctors of medicine, osteopathy, and optometry. Internships completed as part of the requirements of a graduate or postgraduate degree program are not covered by these restrictions. Borrowers completing dental internships or residencies may continue to qualify for in-school deferments.

The exclusion of deferments for borrowers based on intern and resident status applies to all borrowers (Perkins, Direct, and Defense) as well as Stafford and SLS recipients.

CANCELLATIONS

A borrower may have all or part of a loan (including interest) canceled for service as a teacher, or for service in a Head Start program, in the Peace Corps or VISTA, or in the military. Cancellation is also granted in case of the borrower's death or permanent total disability.

Although cancellation provisions may vary for Defense, Direct, and Perkins Loans, certain common provisions apply to all the loans. These common elements are summarized below.

- The borrower must apply for cancellation for teaching, military, or volunteer service by obtaining the appropriate cancellation form from the institution that made the loan, submitting it to the institution in a timely manner, and providing any additional documentation associated with the specific cancellation requested. It is the institution's responsibility to determine if the borrower is entitled to the cancellation. The decision to cancel a loan may not be delegated to an agency servicing the institution's student loan accounts.

- No portion of any loan may be canceled for services the borrower performed before the loan was disbursed or when the borrower was in school.

- The lending institution must grant a cancellation for death or permanent total disability regardless of the loan's repayment status.

- For each a year a borrower receives partial loan cancellation for military or VISTA service, he or she is considered to also have used one year of deferment for the same service.

- A borrower whose defaulted loan has been accelerated can receive a cancellation for services performed before the date of the acceleration, but cannot receive a cancellation for services performed after loan acceleration.

- No repayment made during a period for which a borrower qualifies for a cancellation may be refunded, unless the borrower makes the payment because of institutional error. To reduce the likelihood of this occurrence, the institution should keep borrowers informed of any new cancellation benefits.

Table 1-4 summarizes cancellation provisions for loans covered under the Perkins Loan program. Regulations pertaining to loan cancellation are provided under Subpart D of the campus-based regulations (34 CFR 674.51-60). Examples of institutional cancellation forms are provided in Appendix A.

Several cancellation benefits are provided for borrowers who become

Table 1-4
Cancellations for Defense, Direct, and Perkins Loans

Type of Service	Defense Loans (Made before 7/1/72)	Direct Loans (made 7/1/72-6/30/87)	Perkins Loans (Made after 6/30/87)
Full-time teaching	10% per year up to 50%	None	None
Teaching low-income and handicapped students	15% per year Up to 100%	15% first and second years; 20% third and fourth years; 30% fifth year	15% first and second years; 20% third and fourth years; 30% fifth year
Service in U.S. Armed Forces	12.5% per year up to 50%	None	None
Service in U.S. Armed Forces in an area of hostility		12.5% per year up to 50%	12.5% per year up to 50%
Service as a Peace Corps or VISTA volunteer	None	None	15% first and second years; 20% third and fourth years
Full-time service as staff member in a Head Start Program	None	15% per year up to 100%	15% per year up to 100%
Total and permanent disability or death	100%	100%	100%

teachers. The availability of these cancellations varies based on the type of loan (Defense, Direct, or Perkins) and teaching service performed by the borrower.

Full-time teaching cancellation. An institution may cancel up to 50 percent of the outstanding balance on a borrower's Defense Loan for full-time teaching in a public or other nonprofit elementary or secondary school, an institution of higher education, or an overseas Department of Defense elementary or secondary school. The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accrued during the year of qualifying service, for each complete year, or its equivalent, of teaching. This type of cancellation is not extended to Direct or Perkins Loan borrowers.

Teaching low-income and handicapped students cancellation. Borrowers are eligible for full loan cancellation for full-time teaching in qualifying elementary or secondary schools listed each year by ED as serving low-income students. Defense Loan holders who teach in institutions that meet ED requirements for this category of cancellation have 15 percent of their loan canceled each year. Direct and Perkins Loan borrowers are subject to a graduated cancellation schedule (as indicated by the rates in Table 1-4) that gradually increases the annual portion of the loan canceled over time.

A similar cancellation is available to borrowers who teach handicapped children on a full-time basis. Again, the rate of annual cancellation differs between Defense Loan borrowers and Direct or Perkins Loan borrowers.

Military service cancellation. A Defense Loan borrower is entitled to cancellation of up to 50 percent for full-time active service in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. The cancellation rate is 12.5 percent of the original loan principal, plus the interest on the unpaid balance accrued during the year of qualifying service, for each year of consecutive qualifying service. To be eligible for this benefit, the Defense Loan must have been made after April 14, 1970, and the military service must have occurred after June 30, 1970. Direct and Perkins Loan borrowers are not eligible for this benefit.

Direct and Perkins Loan borrowers are eligible for another cancellation based on military service, however, that is not available to Defense Loan borrowers. Borrowers who serve as members of the branches of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard may have up to 50 percent of their Direct or Perkins Loan canceled for service in an area of hostilities that qualifies for special pay under Section 310 of Title 37 of the U.S. Code. The cancellation rate is 12.5 percent per year of the original outstanding loan principal, plus the interest on the unpaid balance accrued during the year of qualifying service, for each complete year of qualifying service.

An interruption of military service does not eliminate the borrower's eligibility for receiving military cancellation benefits for subsequent military service. Thus, a borrower could, for example, serve in the Armed Forces for two years, canceling 25 percent of his or her loan, terminate military service, and then later reenlist and again receive cancellation for military service up to an additional 25 percent of the loan so that he or she ultimately would have received the maximum allowable cancellation for military service.

It should be noted that in the case of military cancellations, service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for cancellation.

Head Start cancellation. A Direct or Perkins Loan borrower is eligible for full cancellation of his or her loan for service as a full-time staff member in a Head Start program if the program operates for a complete academic year, or its equivalent, and the borrower's salary does not exceed the salary of a comparable employee working in a local educational agency of the area served by the program. The cancellation rate is 15 percent per year of full-time service.

The Head Start cancellation provision does not apply to Defense Loan borrowers. Defense Loan borrowers teaching in prekindergarten programs, however, might qualify for cancellation in states that recognize this type of program as being a statutory part of the state's elementary education program.

Volunteer service cancellation. Only Perkins Loan borrowers are entitled to cancellation for service as a volunteer under the Peace Corps Act and The Domestic Volunteer Service Act of 1973. A borrower may receive cancellation of up to 70 percent of the outstanding balance on his or her loan. The loans are canceled at a rate of 15 percent for each of the first and second 12-month periods of service and 20 percent for the third and fourth years of service.

Death cancellation. The outstanding loan principal plus all accrued interest and penalty charges are considered canceled when proof of a borrower's death, such as an official copy of the death certificate, is provided to the lending institution. If the institution is unable to secure a death certificate for a missing person, it should note that in most states a person is assumed dead if missing for more than seven years. In the meantime, the borrower is considered to be in default and the loan would qualify for assignment to ED. The borrower also is considered dead if his or her assets or will are probated by the state, even if the institution does not receive a copy of the death certificate.

Disability cancellation. The outstanding loan principal plus all accrued interest and any penalty charges may be canceled at the request of the borrower if the lending institution determines that the borrower has become permanently and totally disabled. Permanent and total disability is defined as the inability to work and earn money because of a medically determined impairment, if that impairment is expected to continue for an indefinite period or to result in death.

It should be noted that even a person who is 95 percent disabled is not eligible to receive cancellation; there is specific statutory language requiring permanent and total disability. Determination must be made on the basis of medical evidence provided by the borrower or his or her representative. Receipt of Social Security disability benefits does not automatically qualify a borrower for permanent and total disability cancellation.

For a physician's convenience, the institution may prepare a form specifically designed for cancellation, defining permanent and total disability according to federal regulations. The physician may then simply sign that statement certifying that in his or her best medical judgment, the patient is permanently and totally disabled.

Difficult and unusual cases will inevitably occur, such as hospitalized psychiatric cases. If hospitalization continues over a period of years, the lending institution may reasonably determine that the borrower is permanently and totally disabled and cancel the loan. A borrower or representative may resubmit a request if he or she has additional medical evidence.

Bankruptcy. A Defense, Direct, or Perkins Loan is written off for bankruptcy if the institution receives an official notice of discharge from a bankruptcy court, unless the school is required to oppose the discharge (see section on *Bankruptcy* later in this chapter).

POSTPONEMENTS

A school may postpone repayments for a 12-month period if the borrower will be providing services that qualify for loan cancellation. The borrower must obtain a postponement form from the lending institution and have it signed by a responsible official of the Peace Corps or VISTA, or of the military agency or school that will employ the borrower. The employer must describe the borrower's duties, list the period of employment, and state whether the job will be full- or part-time.

If a borrower has received more than one type of loan (Defense, Direct, or Perkins), but is not eligible for cancellation benefits on all of them, the school may postpone only the repayments on the loan(s) for which cancellation will be available.

A school may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement. (If the school was originally exercising the minimum repayment option, it must cease doing so.) If a borrower has received more than one loan (Direct, Defense, or Perkins), but not all can be canceled, the amount due on the uncancelled loan(s) is the amount the student would normally pay.

Loan Collection

Many professionals in the field of student loan administration and management consider the generic term "loan collection" to be synonymous with the federal term "due diligence." As discussed earlier in this chapter, the concept of due diligence, when applied to institutional responsibilities in the Perkins Loan program, embraces more than collection actions alone. Nonetheless, institutional loan collection must be considered one of the most significant aspects of the due diligence process. The practices and techniques utilized by institutions and/or their agents are critical to this campus-based program, for without a successful collection record, an institution is unable to replenish its revolving fund and the amount of capital to lend to incoming students is diminished.

Regulations governing the Perkins Loan program delineate specific steps an institution must take in the collection of defaulted loans. Institutions are required to initiate collection procedures to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of an institution's billing procedures. If the borrower does not respond in a satisfactory manner to the final demand letter, the institution must contact the borrower by telephone. If the borrower's response is still unsatisfactory, the institution is required to take the following steps:

- report the defaulted account to at least one credit bureau (unless specifically prohibited by state law); and

- use its own personnel to collect, or hire a collection firm.

Regulations covering the collection of loans for the Perkins Loan program are found under 34 CFR 674.45.

Credit bureaus. Institutions are required to select at least one credit bureau for information referrals. A school may choose a bureau that serves the areas from which the majority of its students is drawn or the areas in which all or a major portion of its alumni resides. Institutions are also required to report any changes in a borrower's account status to the credit bureau(s) to which it reports a defaulted account and must respond promptly and accurately to any inquiry from a credit bureau regarding information reported on the loan account.

Collection placement. If an institution or its agent pursues collection for up to 12 months and is not successful in bringing the defaulted account into regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation of the loan, the school must litigate the account or initiate a second collection effort.

In cases where an institution uses its own personnel to perform the initial collection procedures, it must refer a delinquent account to a commercial collection agency (unless specifically prohibited by state law). If, at the outset, the institution refers a loan account to a collection agency, the school must require the agency to return the account to the institution after 12 months of collection activity if the collection agency does not succeed in placing the amount into a repayment status. In this situation, the institution has the option to attempt to collect the loan using its own personnel or to refer the account to a different collection firm.

LITIGATION

If the above efforts fail, the institution must consider, at least once a year until barred by the applicable statute of limitations, if litigation should be pursued. The school must litigate if all the following conditions are met:

- the total amount owed (including outstanding principal, interest, collection costs, and late charges) on all the borrower's Perkins Loans and/or NDSLs at the school exceeds $200;
- the borrower can be located;
- the borrower either has enough assets attachable under state law to cover a major portion of the debt, or sufficient income that can be garnished under state law to satisfy a major portion of the debt over a "reasonable" amount of time (the school can define "reasonable" as it wishes);
- the borrower does not have a defense that will bar judgment for the school—in a case where the borrower has a partial defense, the school must weigh the costs of litigation against the costs of recovery, based on the amount of the enforceable portion of the debt); and
- the expected costs of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

Even where these conditions are not met, the school may sue a defaulted borrower at any time and at its own discretion.

The school must try to recover all the costs of litigation, including attorneys' fees, court costs, and related expenses, to the extent permitted by applicable law. The school is also required to attempt recovery of all costs previously incurred in the collection of overdue payments, if these costs have not been paid by the borrower (as detailed below, a percentage of these unrecovered costs may be charged to the Fund).

COLLECTION COSTS

The federal requirements associated with collection costs and their disposition have changed in recent years. The trend has been toward making the borrower increasingly more responsible for the payment of the costs incurred in loan collection and the conduct of other procedures associated with delinquencies in loan repayment. Current due diligence regulations require an institution to assess a borrower all reasonable costs incurred by the institution with regard to a loan obligation.

The institution is required to determine the amount of collection costs that are charged to the borrower for actions associated with address searches, collection, litigation, and bankruptcy. The estimate may be based on actual costs incurred for actions related to the individual borrower's account or average costs incurred from similar actions taken to collect loans in similar states of delinquency. The Perkins Loan Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

Regulations also specify that funds collected from the borrower must be deposited in interest-bearing bank accounts or invested in low-risk income-producing securities.

Costs chargeable to the Perkins Loan Fund. In general, billing costs associated with charges for actions on past-due loan payments are assessed against the borrower. An institution is permitted to waive late charges, however, for a borrower who repays the full amount of past-due payments on a loan.

If the amount recovered from a borrower does not fully cover the amount of past-due payments and late charges, the institution may charge the Fund only the portion of the late charges that represents the cost of telephone calls required during billing.

Collection and litigation costs also must be assessed against the borrower. An exception to this rule does exist, however. Prior to filing suit on a defaulted loan, the institution is permitted to waive the percentage of collection costs applicable to the amount then past due on the loan, equal to the percentage of the past-due balance that the borrower pays within 30 days of the date on which the borrower and the institution enter into a written repayment agreement regarding the loan.

In cases where the amount recovered does not satisfy the full amount owed, the institution may charge the Fund for certain costs. The charges allowed, that are not recovered from the borrower, include the following:

- amounts waived in accordance with the regulations;
- a reasonable amount for the cost of a successful required address search;
- costs related to required use of credit bureaus;

- an amount that does not exceed 33 1/3 percent of the amount of principal, interest, and late charges collected during an initial collection effort;

- an amount that does not exceed 50 percent of principal, interest, and late charges collected during a second collection effort; and

- litigation costs, including attorney's fees, court costs, and other related costs, not to exceed (1) actual costs incurred in taking action in required and authorized bankruptcy proceedings, (2) the portion of costs of other actions associated with bankruptcy proceedings, which together with authorized costs do not exceed one-third of the total amount of the judgment obtained on the loan, and (3) in all other cases 50 percent of the amount of the judgment obtained against the borrower.

In addition, if a collection firm performs or contracts for both collection and litigation activities on a defaulted loan, an amount for both of the services that does not exceed 33 1/3 percent of the amount of principal, interest, and late charges for a first collection effort or 50 percent for a second collection effort as required under the regulations may be charged to the Perkins Loan Fund.

Institutions must support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. This information must be maintained in the school's files and be readily available for audits and program reviews. The rules regarding collection costs and costs chargeable to the Fund are found under 34 CFR 674.45(e) and 674.47.

Computation of collection costs. In most instances, collection costs must be charged to the borrower and not to the Fund. Since most collection firms charge a contingent fee, a problem is encountered in what balance to place with an agency to ensure that the Fund is not charged the cost of collection. Examples A, B, and C illustrate three methods by which collection agencies charge their services. Table 1-5 depicts how collection charges are passed on to borrowers.

Internal collection costs. Once the internal collection costs have been determined, the institution must pass these costs on to the borrower by accumulating them in a collection costs "bucket" in accounts receivable. Prior to November 30, 1987, these costs could be charged directly to the Fund. Now, however, collection costs must be charged to the borrower. The institution may keep funds received for collection charges that were previously charged to the institution.

There is an exception to this rule, however. An institution can waive or charge to the Fund a percentage of the internal and external collection costs if the borrower pays a portion of the past-due amount and within 30 days signs a new repayment agreement. The amount waived or charged to the Fund must equal the percentage of the past-due amount that the borrower has paid. In

Example A
Fee-on-Fee Method of Charging for Collection Services

Amount of Debt - $300 Agency Fee - $150

Amount Paid	Agency Fee	Amount Recovered
$ 60	$ 20	$ 40
60	20	40
60	20	40
60	20	40
60	20	40
60	20	40
60	20	40
30	10	20
$450	$150	$300

This example shows a 33 percent fee on the total amount collected, or a 50 percent rate on the amount of debt before the addition of the collection costs. This fee applies when the promissory note does not contain a 25 percent collection cost limitation. The amount placed with the agency would be $450.

Example B
Straight Method of Charging for Collection Services

Amount of Debt - $300 Agency Fee - $100

Amount Paid	Agency Fee	Amount Recovered
$ 60	$ 15	$ 45
60	15	45
60	15	45
60	15	45
60	15	45
60	15	45
40	10	30
$400	$100	$300

This example shows a 25 percent fee on the total amount collected or a 33 percent rate on the amount of debt before the addition of the collection costs. This fee applies when the promissory note does not contain a 25 percent collection cost limitation.

Example C
Inappropriate Method of Charging for Collection Services

Amount of Debt - $300 Agency Fee - $133

Amount Paid	Agency Fee	Amount Recovered
$ 60	$ 20	$ 40
60	20	40
60	20	40
60	20	40
60	20	40
60	20	40
40	13	27
$400	$133	$267

The amount recovered in this example is not sufficient to satisfy all outstanding principal. There is a shortage of $33 remaining on the loan principal using this method. This fee cannot be charged to the Perkins Loan Fund or to the administrative cost allowance.

Table 1-5
Formula for Charging Borrower for Collection Services

A = 100% minus collection cost %
B = Amount Outstanding (Principal and Interest)
C = B divided by A

Example: A = 100% - 33.333% = 66.667%
B = $300
C = $300 ÷ 66.667% = $450 = amount placed with the agency

addition, the institution may charge a successful address search and costs for the use of a credit bureau to the Fund. Collection efforts that do not exceed 33 1/3 percent of the amount placed for collection for first placement and 50 percent for second placement accounts also may be charged to the Fund.

Bankruptcy

Bankruptcy can pose particularly complex and idiosyncratic problems, and all schools faced with a borrower who files for bankruptcy should consult an attorney. The following guidelines cover only the basic actions that schools must take.

If the institution receives notice that a borrower has filed for bankruptcy, it must immediately stop all collection efforts apart from those related to the bankruptcy proceeding itself. If the borrower has filed under Chapter 12 or 13 of the Bankruptcy Code, the school must also suspend collection efforts against any endorser.

The school must file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

Cases filed under Chapters 7, 11, or 12 *(request for discharge on grounds of undue hardship).* In compliance with the law, the school cannot oppose a discharge of a borrower whose loan has been in repayment for seven years or more (excluding deferment periods). However, if the loan has been in repayment for less than seven years, the school must determine whether or not repayment under the current or under an adjusted schedule would impose undue hardship on the borrower and his or her dependents. If this determination, which should be made on the basis of reasonably available information, suggests that undue hardship would not result, then the school must decide if the expected costs of opposing the discharge would exceed one-third of the total amount owed on the loan (principal, interest, late charges, and collection costs). If the anticipated costs are less than below one-third, the school must oppose the discharge and, if the borrower is in default, seek a judgment for the amount owed. If necessary, the school may compromise a portion of that amount to obtain a judgment.

Cases filed under Chapter 13 *(adjustment of repayment).* Borrowers who file under Chapter 13 are seeking an adjustment in repayments rather than a discharge. The borrower proposes a repayment plan, which the bankruptcy court then rules on. If that plan proposes full repayment of the loan, including all principal, interest, late charges, and collection costs, or if that plan does not include any provision regarding the loan obligation or general unsecured claims, no response from the school is required.

However, if the borrower proposes to pay less than the total amount owed, the school must determine, from its own records and court documents, the amount of the loan dischargeable under the plan. The school must also determine if the proposed repayment plan meets the requirements of 11 U.S.C. 1325, especially the requirements that:

- the amount to be paid must at least equal the amount the school would receive if the debtor had filed under Chapter 7 rather than Chapter 13; and

- the debtor must use all income not needed to support himself or herself and dependents to pay creditors under the plan.

If the borrower's proposed repayment plan does not meet those requirements, the school must object to the confirmation by the court of the proposed plan, unless the cost of this action will exceed one-third of the dischargeable debt, in which case the school is not required to take this action.

When a borrower proposes to repay less than the total amount, the school also must determine if grounds exist under 11 U.S.C. 1307 for the school to move to have the Chapter 13 case either dismissed or converted to a Chapter 7 proceeding. Such grounds include a borrower's failure to:

- begin payments under the plan within the required time (usually, 30 days from the date the plan is filed);

- file a proposed plan in a timely manner; or

- pay required court fees and charges.

If such grounds do exist, the school must move to dismiss or convert the Chapter 13 case to a Chapter 7 proceeding, unless the cost of this action will exceed one-third of the dischargeable cost.

Monitoring compliance. Once a repayment plan is confirmed by the court, the school must monitor the borrower's compliance with the repayment plan. For a loan that entered repayment more than seven years before the borrower filed for bankruptcy, if the school determines that the borrower has not made the payments required under the plan or has filed for a hardship discharge under 11 U.S.C. 1328(b), the school must determine whether grounds exist under 11 U.S.C. 1307 to dismiss the case filed under Chapter 13 or to convert the Chapter 13 case to a Chapter 7 proceeding, or if the borrower is entitled to a hardship discharge. If grounds do exist, the school must move to convert or discharge the case, and if a borrower has not demonstrated hardship, the school must oppose the hardship discharge request, unless the cost of these actions, when added to those already incurred, would exceed one-third of the dischargeable debt.

Resuming billing and collection if loan is not discharged. The school must resume billing and collection if the borrower's case has been dismissed, or if the borrower has received a discharge that did not affect his or her student loan obligation. (For example, if the loan was not scheduled by the borrower, and the school did not know of the proceeding in time to file a claim.) However, certain qualifications to this rule do exist (see 34 CFR 674.49 (f)). In those cases where the school cannot resume billing and collection against the borrower, the school must pursue the endorser.

Because a Perkins Loan or NDSL that is discharged in bankruptcy is not considered to be in default, the student whose loan has been discharged in bankruptcy is eligible to receive assistance from Title IV student aid programs. However, a school may deny a Perkins Loan or NDSL on the grounds that a loan previously discharged in bankruptcy is evidence that the student would be "unwilling to repay" the Perkins Loan or NDSL.

Assignments

An institution may submit a defaulted loan note to the ED Secretary for assignment to the federal government if the school has been unable to collect the loan despite complying with the due diligence requirements, to the extent that the actions were required by regulations in effect on the date the loan entered default status. The total amount of the loan account to be assigned must be greater than $200, based on the total amount of outstanding principal, accrued interest, collection costs, and late charges. In addition, the institution must have accelerated the loan.

ED establishes the specific procedures and schedules for the assignment of Perkins, Defense, and Direct Loans. Under current rules, the institution makes the decision to assign an eligible uncollectible loan or to retain the loan account for further collection attempts. Once a loan is accepted for assignment, the institution's default rate is reduced, since the school no longer has to include the defaulted account in the annual computation of its default rate. When a loan is accepted for assignment, the institution also gives up any future right to any amount collected on the defaulted loan, since the promissory note becomes the property of the federal government. If payment is made to an outside firm or the institution by the borrower after an account has been assigned, the full payment must be forwarded immediately to ED. All amounts collected by ED on assigned loans revert to the U.S. Treasury and are not redistributed to Perkins lenders.

ED "Dear Colleague" letters instruct institutions on their assignment submissions. The requirements vary according to each school's Perkins Loan default rate.

The regulations under 34 CFR 674.50 stipulate the general parameters of the assignment process. The institution must provide:

- A completed "Perkins Loan Program Assignment Form" (ED Form 533); the form must include the institution's certification that it has complied with applicable due diligence and loan collection requirements.

- The original promissory note or a certified copy of the original note.

- A copy of the repayment schedule.

- A certified copy of any judgment order entered on the loan.

- A complete statement of the payment history.

- Copies of all approved requests for deferment, postponement, and cancellation.

- A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

- Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection, or litigation services, and has notified that firm or firms to cease activity on the loan.

- Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

If a borrower has made sporadic payments before a loan is assigned, the loan still may be assigned as long as the borrower has not repaid all overdue amounts (brought his or her account current).

All loans that an institution selects for assignment must be recalled from outside services and/or collection agencies at least 60 days prior to the certification date on the Perkins Loan Program Assignment Form. When assigning different types of loans for the same borrower, each loan must be treated as a separate submission.

If an institution has a default rate greater than 7 1/2 percent as of June 30 of the second year preceding the submission period, the school must provide documentation that the institution has complied with all due diligence requirements. If all steps of due diligence have not been performed, the institution is allowed to "cure" the oversight beginning with skip-tracing and continuing through litigation. Past errors will not necessarily prohibit the possibility of assigning an uncollectible account, unless the required signatures were not obtained on a promissory note. When a cure process loan is submitted for assignment, institutions must clearly write "Cure process submission" in large print at the top of the Perkins Loan Program Assignment Form.

The ED assignment processing steps are as follows:

- The institution submits accounts to the Perkins Loan/NDSL Processing Center. (ED will accept submissions throughout the year. However, ED cautions that only submissions received by February 15 can be certain of being processed in time to influence the default rate as of June 30.)

- ED manually counts loans and compares them to the institution's submission package.

- ED reviews accounts for assignment compliance and sends an acknowledgment letter to the institution listing the names, Social Security numbers, and loan identification numbers of borrowers whose loans were received.

- ED returns rejected accounts to the institution, stating the reasons for rejection. The institution can resubmit accounts when the reason for rejection is resolved. These accounts must be marked "Resubmissions."

- When all assignment criteria are met, ED sends an official notice that the loan has been accepted for assignment. The school must retain the notice.

- ED uses certain criteria to automatically reject loans for assignment, including:

- If the institution fails to provide the borrower's Social Security number.

- If the borrower has received a discharge in bankruptcy unless the debt was determined nondischargeable and a judgment was entered against the borrower or a court has entered judgment against the borrower on the loan after the entry of the discharge order.

- If the institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

- If the borrower was granted cancellation due to death or filed for or was granted cancellation due to permanent and total disability.

If ED determines that an assigned loan is unacceptable in whole or in part because of the acts or omissions of the institution or its servicing agents, ED has the authority to require the institution to reimburse the Fund. Once the institution has made the required reimbursement, ED transfers all rights, title, and interest back to the institution for its own account.

A borrower whose loan has been assigned continues to be considered in default on that loan for the purpose of eligibility for assistance under any Title IV student financial aid program. This status continues until the borrower makes satisfactory arrangements to repay the loan and the institution receives a confirmation from ED of the arrangement.

Referrals. In the past, institutions also were permitted to refer defaulted loans to ED for collection. The referral program was short-lived and institutions were not permitted to submit loans for referral after June 30, 1981. One reason for the program's failure was the inability of U.S. attorneys to sue borrowers, since loans in referral remained the property of the institution. In 1989, ED ceased its collection activity on referred loans and offered institutions a one-time opportunity either to assign previously referred loans to the federal government or to have the referred loans returned to the institution for collection.

Write-Offs

As stated previously, accounts of $200 or less are not acceptable for assignment. An institution is permitted to write off such a loan if it has pursued all the due diligence requirements by charging it to the Fund (principal, accrued interest, late charges, and collection costs must total $200 or less) once the federal and state statutes of limitations have expired. In the interim, if a borrower's address is known a statement should be sent to him or her at least annually requesting payment. If an institution is unaware of the borrower's address, it must attempt to contact the borrower at least every six months until the statutes of limitations expire. If an institution receives a payment from a borrower after his or her loan has been written off, the institution must deposit that payment in the Fund or into its own account if it chose to satisfy the debt with its own funds. An institution that writes off an account can no longer include the amount as an asset of the Fund.

Endnote

On November 13, 1990, ED issued a notice of proposed rulemaking in the *Federal Register* to amend the Perkins Loan program. Certain provisions would change the definition of low-income individuals, reduce collection costs chargeable to the Fund, clarify the current waiver provision, and alter write-off authority. Student loan managers and collectors should review the Federal

Register notice and be alert for the publication of a final rule, the content of which will depend upon the results of ED's review of public comments and its further analysis of the proposed changes.

Chapter 2

Income Contingent Loan Program

The Income Contingent Loan (ICL) program is a demonstration project designed to explore the feasibility of a direct loan program that utilizes an income contingent repayment plan. The Higher Education Amendments of 1986 (P.L. 99-498), which added Part D to Title IV of the Higher Education Act of 1965, authorized the U.S. Department of Education to conduct the ICL project for five years, beginning with the 1987-88 academic year, and to select 10 institutions to participate in the project. The initial participants include:

- Abraham Baldwin Agricultural College,
- Brown University,
- Hampton University,
- Loyola University of Chicago,
- Marquette University,
- Metropolitan State College,
- Rochester Institute of Technology,
- Rutgers University,
- University of Missouri, Rolla, and
- Wheeling College.

Although many of the regulatory requirements for the ICL program are modeled after the Perkins Loan program, some are based on the unique characteristics of ICLs. Regulations governing the scope of the program, selection of institutions, general provisions, and promissory notes are found under 34 CFR 673 and were first issued on August 5, 1987. Rules covering the due diligence requirements of the ICL program were issued on November 6, 1989, under Subpart E of the same regulations. The commentary provided in this chapter highlights the unique features of the ICL program.

Student Eligibility

Although, for the most part, students applying for an ICL must meet the same eligibility tests established in the Perkins Loan program, differences between the programs do exist. To begin with, whereas Perkins Loans are available to both undergraduate and postgraduate students, ICLs are offered only to undergraduate students. Second, under the ICL rules, once all need-based students have received loans, an institution may award any remaining funds to eligible students who have *not* demonstrated financial need for the loan or who wish to borrow to meet their expected family contribution.

Loan Maximums

The maximum amounts that a student may borrow in an academic year of undergraduate study are as follows:

- first and second year, $2,500;
- third year, $3,500;
- fourth and fifth years, $4,500.

The aggregate five-year limit on borrowing is $17,500.

Interest Rates

A distinctive feature of the ICL program is that interest accrues to the borrower while he or she is still in school. Interest on ICLs begins to accrue from the first day of the month following disbursement of funds to the borrower. The interest rate may be fixed or variable, as determined by the institution. A fixed interest rate, which will remain in effect for the life of the loan, is based on the average bond equivalent rate of 91-day Treasury bills for the quarter ending September 30 of the preceding calendar year, plus 3 percent. If the school uses a variable rate, the interest rate will change each calendar year. Variable rates for loans made from 1987 through 1990 were:

1987	8.65 percent
1988	9.27 percent
1989	10.24 percent
1990	11.12 percent

The terms of the ICL require that interest accrue on the outstanding principal balance of the loan from the date of disbursement. The institution must then add accrued unpaid interest to the principal balance of a loan (in other words, it must "capitalize" the interest) each year.

Promissory Notes

Schools participating in the ICL program must use an ICL promissory note approved by the ED Secretary such as the one provided in Appendix A to the program regulations. Separate notes are required for advances made under a fixed interest-rate loan agreement and for awards made under a variable interest agreement. In addition, if in the case of a fixed-rate loan a single note is used to record advances for multiple years, the institution must identify on the note the applicable interest rate for each advance.

Repayment

Repayment must begin nine months after the borrower ceases to be at least a half-time regular student. The borrower may request a reduction in this "grace period" and begin repaying the loan earlier. The ICL program imposes no maximum time limit for repayment; rather, the intent of the program is to establish a payment schedule that is aligned with each borrower's financial resources during the repayment period. On November 1 of each year of the repayment period, the borrower must submit a copy of his or her previous year's tax return. The borrower's taxable or adjusted gross income, including a spouse's income, is used to establish the payment obligation of the borrower for each calendar year. The institution may require the borrower to make monthly, bimonthly, or quarterly installment payments. Table 2-1 displays the matrix the institution must employ in calculating a borrower's annual repayment obligation. The school uses its own determination of the borrower's adjusted gross income and adjusts that amount by an inflation factor provided by ED.

If the institution is unable to establish an income amount, the repayment amount using a monthly schedule would be calculated as follows:

Table 2-1
Repayment Rates for ICLs

	Opening ICL Balance*		
Year of Repayment	Up to $10,000	$10,000-$19,999	$20,000 and above
		(Percentage of Income Due)	
Initial payment period	5%	5%	5%
Year 3	7%	9%	10%
Years 4 and 5	8%	10%	11%
Years 6, 7, and 8	9%	11%	12%
Years 9 and beyond	10%	12%	12%

* The opening ICL balance is the amount of principal and capitalized interest at the time the loan enters repayment.

7 percent times balance (less than $10,000) divided by 12 = monthly payment

6 percent times balance ($10,000 to $19,999) divided by 12 = monthly payment

5 percent times balance ($20,000 and over) divided by 12 = monthly payment

Deferments and Cancellation

The ICL program offers two deferments, both of which suspend repayments of principal and interest (although interest continues to accrue). An *in-school* deferment is available to an ICL borrower who is enrolled at a higher education institution on at least a half-time basis. A *financial hardship* deferment may be granted if the institution determines that a borrower is unable to make scheduled payments due to extraordinary circumstances; more than one period of financial hardship deferment may be granted, but such deferments may not total more than three years over the entire repayment period. As with other loan programs, deferments must be requested in writing with documentation provided to support the request. A borrower whose loan has been accelerated is not eligible for deferment on that loan.

The only cancellations allowed for ICLs are for death or permanent and total disability (as defined in the regulations).

Due Diligence

Due diligence requirements for ICLs are comparable to those for Perkins Loans. Institutions participating in the program are required to inform borrowers of their rights and responsibilities, to attempt to collect from borrowers, and, under certain conditions, to sue defaulted borrowers. Contacts with the borrower, address searches, and billing, collection, and litigation procedures are comparable to the Perkins Loan rules as far as possible.

Chapter 3

Health Professions Student Loan and Nursing Student Loan Programs

The Health Professions Student Loan (HPSL) program was authorized by the Health Professions Educational Assistance Act of 1963 (P.L. 88-129), which established Title VII of the Public Health Service Act, of which Part C authorized student assistance programs. Although the HPSL program originally was limited to providing student assistance funds to students in schools of medicine, dentistry, and osteopathy, subsequent changes to the law have expanded coverage of the loan program to other health professions disciplines including optometry, pharmacy, podiatry, and veterinary medicine. The HPSL program provides long-term, low-interest loans to aid students who need financial assistance to undertake a course of study in the covered fields.

The Nursing Student Loan (NSL) program originally was authorized by the Nurse Training Act of 1964 (P.L. 88-581), which established Part B of Title VIII of the Public Health Service Act to provide for student loan funds at nursing schools. NSLs are awarded to needy students pursuing a course of study leading to an associate degree in nursing (registered nurse only), a diploma in nursing, a baccalaureate degree or the equivalent in nursing, or a graduate degree in nursing. The NSL program provides low-cost loans for full- and half-time nursing students.

Since their inception, the HPSL and NSL program regulations have been amended several times by Congress. Regulations governing the two programs are found under 42 CFR 57 Subpart C (HPSL) and Subpart D (NSL). The HPSL and NSL programs are administered by the Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, an agency of the Public Health Service of the U.S. Department of Health and Human Services (HHS).

The HPSL and NSL Funds are operated in a manner comparable to the Perkins Loan Fund. Each is a revolving fund with at least one institutional dollar for every nine federal dollars. Schools are responsible for determining eligible students, making loans, and collecting from borrowers.

Interest Rates

Prior to July 1, 1969, borrowers who received HPSLs and NSLs during different periods paid the interest rate of the borrower's first loan on all loans. Since July 1, 1969, loans that are made at different interest rates must be repaid at their respective interest rates. For example, a student who became a borrower in September 1967 had his first loan processed when the statutory interest rate was 4 3/4 percent; the second loan, when the rate was 5 3/8 percent; and the third, when the rate was 3 percent. The interest rate on the first two loans was computed at 4 3/4 percent and the interest on the third loan was computed at 3 percent. Summaries of HPSL and NSL interest rates are presented in Tables 3-1 and 3-2. Interest is computed on the unpaid principal balance and begins to accrue on expiration of the grace period, unless a borrower is eligible for deferment status.

In-School Administration

ELIGIBILITY

A borrower of an HPSL or an NSL must be a national of the United States, a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands, or a lawful permanent resident of the United States, Puerto Rico, the Virgin Islands, or Guam. A student who remains in this country on a student or visitor's visa is not eligible.

The borrower must be enrolled, or accepted for enrollment, as a full-time student (or at least half-time for nursing students) in an institution that participates in the loan program. The student must be in good standing according to the institution, and capable of maintaining such standing during the course of study.

To receive a loan, the student must need the requested assistance in order to pursue his or her course of study. HPSL applicants who are students of medicine or osteopathic medicine must demonstrate exceptional financial need

Table 3-1
HPSL Interest Rates

Date HPSL Was Incurred	Interest Rate
July 1, 1964-June 30, 1966 (FY 1965-66)	4¼%
July 1, 1966-June 30, 1967 (FY 1967)	4⅝%
July 1, 1967-June 30, 1968 (FY 1968)	4¾%
July 1, 1968-June 30, 1969 (FY 1969)	5⅜%
July 1, 1969-September 30, 1977	3%
October 1, 1977-August 12, 1981	7%
August 13, 1981-November 3, 1988	9%
Beginning November 4, 1988	5%

Table 3-2
NSL Interest Rates

Date NSL Was Incurred	Interest Rate
July 1, 1964-June 30, 1966 (FY 1965-66)	4¼%
July 1, 1966-June 30, 1967 (FY 1967)	4⅝%
July 1, 1967-June 30, 1968 (FY 1968)	4¾%
July 1, 1968-June 30, 1969 (FY 1969)	5⅜%
July 1, 1969-August 12, 1981	3%
August 13, 1981-November 3, 1988	6%
Beginning November 4, 1988	5%

in order to be eligible for these loans. Although the "exceptional" financial need criterion for NSL recipients was removed by law in 1988, NSL applicants in the category must receive preference by the institution in its awards-making process. In addition, students applying for an HPSL must be in compliance with the requirement to register with the draft, if required to do so under Section 3 of the Military Selective Service Act.

A student who has previously attended an institution of higher education must submit a financial aid transcript that includes at least the following data:

- applicant's name and Social Security number;
- amounts and sources of all previous loans and grants;
- statement of whether or not the applicant is in default on any educational loans or owes a refund on any grants; and
- an authorized signed certification from each institution previously attended regarding any financial aid received, if applicable.

LOAN MAXIMUMS

The maximum HPSL that can be awarded to a student for an academic year or its equivalent is $2,500, plus cost of tuition. There is no aggregate limit for all years.

The maximum NSL available in an academic year or its equivalent may not exceed $2,500, or $4,000 in each of the final two academic years, or the amount of the student's financial need, whichever is less. The aggregate of NSL loans for all years to any student may not exceed $13,000 for any nursing student. Prior to November 4, 1988, the maximum NSL borrower's level was $10,000.

For students enrolled in a school that has a required course of study longer than the typical nine-month, September-to-June academic year, the maximum loan amount for both HPSLs and NSLs may be increased proportionately. For example, if a student pursues a course of study for a full 12 months, an HPSL borrower may borrow a maximum of 12/9 of $2,500, or $3,333, plus the cost of tuition for the 12-month period.

A student who applies for a loan after the first quarter, semester, or term may receive the full amount requested, provided that the total amount for that school year does not exceed the annual maximum allowed by law or the amount the student actually needs for continuing his or her studies for the rest of the year, whichever is less.

MAKING A LOAN

Each institution should use a system for making loans that best fits its particular philosophy and budget. Many health professions and nursing schools have their own financial aid office, while a separate office (usually the institution's business office) performs the collection work. Some use a central financial aid office responsible for both awarding and collecting loans. The preferable method, from a sound business and internal control standpoint, is for one office to determine need and grant loans and another office to perform collection work.

Promissory notes. Each HPSL and NSL requires a note that sets forth the legal conditions under which the loan is granted. This promissory note is the legal document that binds the borrower to the repayment obligation, the terms of the Public Health Service Act, and federal regulations and policies that govern the particular loan program. Each note must be properly executed in a form approved by the HHS Secretary and properly safeguarded by the institution against fire, theft, and tampering.

The promissory note form must contain all pertinent requirements set forth in the regulations governing HPSLs and NSLs. A common form may be obtained from HHS. If the institution uses its own note forms, HHS must approve any changes in the terms of the note. In addition, the institution should consider the following additions, which do not require HHS approval:

- provision of a place for the borrower to enter his or her permanent home address, since some means of identification is needed when there are two or more students with the same name; and

- provision of a place for the financial aid officer to sign indicating his or her approval—this resolves auditors' concerns as to whether or not the loan was approved through proper channels.

HPSLs made on or after June 3, 1983, must include an acceleration clause. Similarly, NSLs made on or after September 24, 1985, require an acceleration clause. Institutions are reminded that, although they must include an acceleration clause in promissory notes, current regulations permit them to exercise their professional judgment in determining when and if it is advantageous to accelerate the loan.

According to regulations for HPSLs and NSLs, every school that makes these loans must exercise due diligence in the collection of all loans. These provisions are found under 42 CFR 57.210 for HPSLs and 42 CFR 57.310 for NSLs. In exercising due diligence, schools must follow procedures that are at least as extensive and effective as those used in the collection of other student loan accounts due to the school and must use the steps prescribed in the regulations in accordance with collection practices that are generally accepted among institutions of higher education. These procedures are intended to lower student loan delinquency rates. In order to fulfill the programs' requirements in exercising due diligence, each participating institution must:

- conduct and document an entrance interview with the borrower prior to disbursing funds;
- conduct and document an exit interview with the borrower prior to the borrower leaving the institution;
- contact the borrower at least twice during the grace period;
- perform regular billing procedures while the loan is in repayment status;
- contact each borrower during a deferment period;
- notify a past-due borrower at least four times;
- perform an address search when necessary;
- use a collection agent (which may be an internal agent of the school);
- become a member of a credit bureau and report accounts past due by more than 120 days to that bureau; and
- litigate if such an action is cost-effective.

The complete text of the most recent final due diligence regulations for the HPSL and NSL programs is provided in Appendix B.

ENTRANCE INTERVIEW

Institutions must conduct entrance interviews with all HPSL and NSL borrowers. A school may conduct an individual or group meeting with the borrower, or exchange information by mail if a personal meeting is not practical. Institutions are encouraged to make individual or group entrance interviews a priority in the financial aid award process in order to prevent problems in the collection process. The school may determine the specific format of the entrance interview and may use innovative methods such as films or computer software programs that "test" the borrower's understanding of his or her rights and responsibilities. The school also may decide which office will be responsible for the entrance interview.

The school must conduct and document an entrance interview for each academic year in which a student receives HPSL or NSL funds and must obtain entrance interview documentation before it disburses a loan to a borrower in any academic year. Regulations do not require a school to conduct an entrance interview every time it makes a disbursement within a single academic year.

Regardless of how an institution conducts the entrance interview, it must obtain the following documentation:

- Evidence that the borrower is aware of the rights and responsibilities associated with the loan. This documentation can be in a format the school chooses, such as a signed and dated statement that lists the borrower's rights and responsibilities, or a signed and dated statement acknowledging that the borrower has been provided with information that explains the rights and responsibilities of the loan. A truth-in-lending statement can satisfy this requirement, provided that it includes additional information that further explains to the borrower the rights and responsibilities of HPSLs and NSLs. For a borrower who receives loan funds in more than one academic year, the school may use a separate form or statement each year in which funds are disbursed, or may have the borrower re-sign and date the original form or statement for each additional year (provided that the information in the original form or statement continues to be applicable).

- Personal borrower information that will assist in skip-tracing if necessary during the collection process. A school may use whatever format it finds most effective to collect this information. For a borrower who receives loan funds in more than one academic year, the school must require the borrower to provide this information anew each year before funds are disbursed, or review and update the original entrance interview information each year before funds are disbursed and re-sign and date the information to indicate when the updating occurred.

ENROLLMENT VERIFICATION

Once the borrower has obtained a loan, the institution should verify enrollment records at least semiannually. If the borrower is no longer enrolled at the institution, the date of separation must be determined and the account placed in a repayment status.

Many borrowers continue to receive loans as long as they remain in school. Each time they apply for a new loan, new or updated information must be obtained by having the borrower complete a form such as the "Personal and Confidential Information Form." Information provided on this type of form can aid in locating a lost borrower, especially if the student leaves without an exit interview.

EXIT INTERVIEW

Once the institution is aware of a borrower's impending departure, the appropriate office must hold an exit interview to ensure that the borrower updates his or her personal information and understands the obligation incurred and repayment options that are available under a particular program. This interview must be provided for students who do not complete their studies as well as for those who graduate. All the borrower's questions should be answered and a thorough understanding must be conveyed regarding the borrower's responsibilities during the repayment period.

It is recommended that the exit interview be conducted by the institutional staff member who is responsible for collection. This person must have full knowledge of program requirements and benefits to ensure that the borrower leaves school with no doubt about what is expected. The institution must provide information on a borrower's rights and obligations and any other essential information needed for repayment of HPSLs and NSLs. The school must maintain, as part of its records, evidence that the borrower was informed of his or her rights and responsibilities.

The interviewer and the borrower must arrange a repayment schedule, including the amount borrowed, interest rate, and amount due for each installment, and agree on the date of the first payment. The borrower is allowed to choose between an equal and a graduated periodic plan, unless the institution has adopted the $15 per month minimum repayment option and the loan qualifies for that category. If the $15 per month ($180 per year) minimum repayment option imposes a hardship on the borrower, payments may be reduced with the mutual consent of the institution and the borrower. The institution also may choose frequency of payments. Repayment installments of HPSLs and NSLs cannot be less often than quarterly. The maximum period of repayment is 10 years for each program; minimum payments cannot extend repayment beyond this period. Promissory notes should be available for inspection by the borrower.

For exit interview purposes, disclosure of truth-in-lending information can be included in the repayment schedule. Truth-in-lending information must be segregated from all other information either in a separate block or by using bold type. Information required for truth-in-lending compliance on the repayment schedule is as follows:

- annual interest rate during repayment;
- identity of the creditor (institution);
- late charge;

- amount financed;
- total dollar amount of all payments; and
- payment schedule.

The borrower must sign the repayment agreement and truth-in-lending form and receive a copy of each, and a copy must be placed in his or her file. The interviewer must have the borrower update skip-tracing information; make sure someone else in addition to the borrower is listed with an address and telephone number; direct the borrower's attention to the advantages of prepayment during the grace period; and make the borrower aware of the importance of paying promptly or contacting the institution prior to the due date if for any reason payment cannot be made. The interviewer should remind the borrower that the institution may impose a late charge for failure to pay all or any part of an installment when it is due, or for failure to file timely evidence of deferment or cancellation of part or all of a loan.

Every effort must be made to hold an in-person exit interview. If the borrower fails to appear for an exit interview, the school must conduct the interview by mail. In either case, a signed repayment agreement must be obtained that should be attached to the promissory note. If the borrower terminates studies without advance notice, the school must document its attempts to inform the borrower of the substance of the exit interview and secure exit interview information from the borrower by mail.

Grace Period Administration

The grace period is a stated time period immediately following completion of studies as a full-time student (or as a half-time student in the case of nursing students who receive loans after November 17, 1971) during which repayment of principal is not required and interest does not accrue. A grace period must be granted to all students upon termination or completion of studies.

For HPSLs, the grace period is three years on loans made on or before June 30, 1969, and one year on loans made on or after July 1, 1969. For NSLs, the grace period is 12 consecutive months on loans made on or before June 30, 1969, and nine consecutive months on loans made on or after July 1, 1969.

If, during the grace period, the NSL or HPSL borrower resumes full-time studies (or at least half-time studies in the case of an NSL borrower) at the same or another health professions or nursing school, the interrupted grace period is treated as if it had not begun at all. The borrower is required to file a "Certification of Deferment Status" (HRSA-519) with the lending institution and is allowed a full grace period when no longer pursuing an eligible course of study as a full-time student (or half-time student in the case of an NSL borrower). A borrower who has been granted the maximum grace period on one loan and who later resumes a full-time course of study at the same or another institution and receives an additional loan is not entitled to an additional grace period for the original loan.

The grace period always begins on the first day of the month nearest to the date the borrower is no longer a full-time student (or half-time student in the case of an NSL borrower). For purposes of calculating the beginning of a grace period, a person receiving a degree on June 15 is considered to have begun his or her grace period as of June 1. The grace period always ends on the last day of a month. On the first day of the following month, the borrower enters into either repayment status or, if approval has been granted, deferment. One or the other of these conditions always exists, without exception. The grace period cannot be extended under any circumstances.

GRACE PERIOD NOTIFICATIONS

Regulations require a school to contact borrowers in writing at least twice during the grace period. Institutions may use discretion in developing reasonable intervals for the two notices (usually they are made 90 and 180 days into the grace period). To comply with this requirement, a school can use whatever form of written notification it finds most effective. Mailed exit interview information may not take the place of a grace period notice. Institutions must keep a copy of all grace period notices and document the dates when they were sent.

Regulations do not specify information that must be included in grace period notifications. A school should use grace period notices as an opportunity to remind the borrower of pertinent information to ensure timely repayment, such as the date the first payment is due and the need to inform the school promptly of an address change.

If a grace period notice is returned because of an incorrect address, the school must record the date the notice is returned or retain the returned envelope. The school also must keep a copy of the notice mailed to the correct address or record the date this notice is mailed. If an updated address is not located until after one of the next regularly scheduled notices would have been mailed, the school must determine whether further grace period notices must be sent or, in the case of the grace period having expired, billing should be initiated.

Billing Administration

A school must perform regular billing. This can be accomplished by sending a statement prior to the due date of each payment or by using a coupon system that provides coupons to borrowers no less than biennially. The school may bill monthly or at least quarterly. However, if the borrower's repayment is past due more than 60 days, a monthly repayment schedule must be established with the school.

If a school sends billing statements, the school must keep a copy of each billing statement mailed to each borrower or keep a sample copy of a billing statement mailed to borrowers and document for each borrower every time a bill is mailed. If a school uses a coupon payment system, it must send coupons to borrowers on at least a biennial basis and document for each borrower the month that coupons are mailed. The institution also must keep each coupon submitted with payment or keep a sample of the coupon payment system and document for each borrower the month that coupons are mailed and the date and amount of each payment received.

If a billing statement or a coupon is returned due to an incorrect address, the school must record the date returned or retain the returned envelope. The school must then initiate an address search and, if successful, keep a record of the date the correct address is obtained and the date the billing statement or coupons are mailed to the correct address.

Prompt, consistent billing on a statement form that provides sufficient information for the borrower to understand fully the status of his or her account is probably the single most important factor in keeping accounts current. It is recommended that the following information be included on the billing statement or coupon:

- name and address of borrower;
- account number;
- total amount borrowed;
- total principal paid to date;
- total interest paid to date;
- total principal canceled;
- outstanding balance;
- current principal amount due;
- current interest amount due;
- past-due principal (if any);
- past-due interest (if any);
- total payment due for month/quarter;
- total amount due if payment in full is to be remitted;

- late charge stated in percentage amount;
- date payment due;
- date of last activity;
- to whom checks should be made payable; and
- address where payment should be sent.

Use of a window return envelope helps to ensure that a borrower will return the institution's portion of the statement or coupon to the correct address.

PAST-DUE NOTICES

A school must make at least four follow-up contacts during the first 120 days a borrower is past due. At least three of these contacts must be in writing and at not more than 30-day intervals. The specific time frame for the three required written contacts is at the discretion of the institution. The school may make the fourth contact in writing, by telephone, or in person at whatever point during the 120-day period the school determines would be most effective.

If a written notice is returned due to an incorrect address, the school must record the date returned or retain the returned envelope. The school must then initiate an address search and, if successful, keep a copy of the notice mailed to the correct address or record the date and type of notice (15-day, 45-day, final demand) mailed. If an updated address is not located until after one or more of the next notices would have been mailed, the school must determine which follow-up notices will be sent. If a school does not locate a correct address until after the loan is more than 120 days past due, the school is strongly encouraged (although not required) to make one or more written or telephone contacts, as appropriate, before referring the loan for collection.

Regulations do not specify a required format for written notices. Institutions may use whatever form of written notification they find most effective, including lettergrams, letters, or messages on billing statements. Although schools have latitude in determining the format of the written contacts, HHS strongly recommends that past-due notices be separate from billing statements. Regardless of the format, written notices should contain language that becomes progressively stronger in tone. The school must maintain copies of each letter sent to each borrower or maintain sample copies of the letters and document for each borrower the date each notice is sent.

If the institution decides that the fourth contact will be by telephone or personal visit, the action must be documented by a record of the date of the telephone call or visit and a brief description of the conversation with the borrower (conversations with relatives or roommates are not acceptable). If the school attempts a telephone or personal contact and is unable to reach the borrower, a fourth written notice must be sent to the borrower.

Address search. A school must perform an address search when it has an incorrect address for a borrower. The school may use whatever skip-tracing methods it finds most effective in locating borrowers as a basis for developing institutional skip-tracing procedures.

Institutions must have written procedures that they initiate on a timely basis when attempting to locate a borrower's correct address. Skip-tracing efforts must be documented by recording the date and result of each attempt. If a school's attempts to locate a correct address fail and the school hires a commercial skip-tracing agency, the school must document the date on which the assistance of the agency is enlisted for each account, the date on which the account is returned, and the results of the agency's efforts.

Late charges. For NSL disbursements made on or after October 1, 1985, and for HPSL disbursements made on or after October 22, 1985, borrowers must be assessed a late charge, not to exceed 6 percent of the installment payment, on loans more than 60 days past due.

The late charge may be a percentage, a flat dollar rate, or a combination of the two at any amount that is within the 6 percent maximum. The amount of the charge must be based on the total amount of the installment payment (including principal and interest) past due at the time the charge is calculated. The late charge must be levied on at least a monthly basis, and may be added to the principal of the loan. For NSLs made before October 1, 1985, or HPSLs made before October 22, 1985, the late charge is $1.00 for the first month past due and $2.00 for each succeeding month that the account remains past due.

DEFERMENTS

If, during the repayment period, an HPSL or NSL borrower qualifies for any of the deferments identified below, the repayment period may be deferred until the borrower ceases to engage in the deferrable activity or has exhausted the maximum allowable time established for the activity.

Deferment extends the original 10-year repayment period for HPSL and NSL borrowers by the length of the actual deferment. Deferment periods need not be consecutive. A borrower may make several payments, engage in a deferrable activity that delays further payments, resume repayments, and then return to deferment status at a later time. Table 3-3 provides a summary of deferments available for holders of HPSLs and NSLs.

Institutions are responsible for granting deferment when a borrower is eligible for deferment status. This responsibility remains with the institution and cannot be delegated to an outside agent, such as a billing agency. In order to determine a borrower's eligibility for deferment, the institution must receive a

Table 3-3
Deferments for HPSLs and NSLs

Type	Loans made on or before 6/30/69	Loans made on or between 7/1/69 and 11/17/71	Loans made on or between 11/18/71 and 11/3/88	Loans made on or after 11/4/88
Advanced professional training	HPSL up to 3 years NSL up to 3 years	HPSL up to 5 years NSL up to 5 years	HPSL no limit NSL up to 5 years	HPSL no limit NSL up to 5 years
Uniformed service	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years
Peace Corps	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years	HPSL up to 3 years NSL up to 3 years

properly completed "Certification of Deferment Status" (HRSA-519) from the borrower.

If the institution has documented evidence of borrowers who are in deferment status as of the date of a required annual operating report or quarterly debt management report, but whose formal Certification of Deferment Status has not been received by the institution, the operating or management report may include these borrowers in a deferred status rather than a delinquent status. Documented evidence may include a written notification from or a documented telephone conversation with the borrower. Such documentation does not replace a properly executed Certification of Deferment Status, which must be obtained from the borrower within a reasonable period. HHS has determined that a "reasonable period" should not exceed 60 days beyond the date a payment is due. A borrower's account is forced into delinquent status if no official deferment document is on file after 60 days.

Deferment contacts. An institution must contact a borrower one to three months prior to the completion of an approved deferment period when the borrower has not requested an extension. The contact may be made in writing or by telephone. Regulations do not specify information that must be included in the deferment period notice. The school should use this notification as an opportunity to remind the borrower of information that is pertinent to ensure timely repayment. If a school expects the borrower's deferment status to continue, the school may include in its written notice a blank deferment form for the borrower to complete and return prior to the time his or her repayment period otherwise would resume.

The school must keep a copy of each notice sent to a borrower, or maintain samples of the deferment notices and document for each borrower when each contact is made. If a deferment notice is returned because of an incorrect address, the school must record the date the notice is returned or retain the returned envelope. The school then must initiate an address search and, if successful, keep a copy of the notice mailed to the correct address or record the date it is mailed. If an updated address is not located until after billing would have begun or been resumed, the deferment contact is not required.

Student status. When an HPSL or NSL borrower ceases to pursue an eligible course of study, but later reenters the same or another nursing or health professions school *within the grace period*, repayment of principal and interest is not required while the borrower is a student. In addition, the borrower is still eligible for the full grace period on completion of the new period of student status. The Certification of Deferment Status will indicate the period of student status. The form must be certified by the registrar's office and returned to the lending institution.

Student deferment. An HPSL borrower who reenters a health professions school as a full-time student is eligible for deferment *after the grace period expires* if his or her loan was made on or after November 4, 1988.

Advanced professional training. An NSL borrower who enrolls in a full-time (or half-time for NSLs made on or after November 4, 1988) advanced nursing training program that is intended to further the borrower's knowledge and strengthen his or her skill in nursing is eligible for deferment of his or her NSL if the program lasts for at least one academic year. Examples of advanced professional training programs eligible for NSL deferment include:

- certificate or master's degree program in nurse practitioner training;
- clinical specialty programs;
- certificate or master's degree program in psychiatric nursing; and
- certificate or master's degree program in public health nursing or community health nursing.

Pursuit of advanced professional training as a nurse anesthetist qualifies the borrower for deferment under the Nurse Training Act of 1975.

A borrower who returns to a regular course of nursing study after the grace period ends qualifies for deferment only when the training is at a baccalaureate or graduate level. Table 3-4 points out circumstances in which an NSL borrower may qualify for deferment for advanced professional training.

An NSL borrower who withdraws or graduates from a nursing program and enrolls in a program of study in another health discipline after a grace period has ended is not eligible for deferment. The borrower must begin making payments according to the repayment schedule agreed to at the exit interview, unless he or she is eligible for forbearance.

Table 3-4
Qualifications for Advanced Professional Training Deferment of an NSL

From	To	Eligible for Deferment?
Diploma	Dipolma	No
Dipolma	Associate Degree	No
Dipolma	Baccalaureate	Yes
Associate Degree	Associate Degree	No
Associate Degree	Dipolma	No
Associate Degree	Baccalaureate	Yes
Baccalaureate	Dipolma	No
Baccalaureate	Associate Degree	No
Baccalaureate	Baccalaureate	Yes
Baccalaureate	Graduate Degree	Yes
Graduate Degree	Graduate Degree	Yes

HPSL borrowers who enter advanced professional training qualify for deferment if the training is intended to further the borrower's knowledge and skills in the health professions disciplines for which the loan was received and if the training is an internship, a residency program, or full-time training beyond the first professional degree.

Uniformed service. HPSL and NSL borrowers who perform up to three years of active duty as members of a uniformed service (Army, Navy, Marine Corps, Air Force, Coast Guard, the National Oceanic and Atmospheric Administration Corps, or the U.S. Public Health Service) are eligible for deferment. (Borrowers who work for a uniformed service in a civilian capacity are not eligible for deferment.) Such service performed during the grace period does not extend the length of the grace period. A deferment for service in a uniformed service is limited to three years.

Peace Corps. HPSL and NSL borrowers who serve as volunteers under the Peace Corps Act are eligible for deferment for up to three years. Such service performed during the grace period does not extend the length of the grace period. Service in VISTA does not qualify a borrower for deferment of an HPSL or NSL.

FORBEARANCE

Due to extraordinary circumstances of the borrower, and at the institution's discretion, the borrower may be granted forbearance, which allows for a temporary delay in repayment of principal. Institutions may use their own forms for borrowers to use to file for forbearance.

NSL borrowers who graduate from a nursing program and, after the grace period, enroll in another nursing program that is not eligible for deferment for advanced professional training or students who change from nursing to a health professions or a nonhealth discipline may be granted forbearance. In addition, borrowers who suffer a drastic change in their financial situation due to events such as prolonged illness, unemployment, or a natural disaster may be eligible for forbearance. HPSL borrowers who change to a nonhealth discipline and/or who suffer a drastic change in their financial situation due to events such as prolonged illness, unemployment, or a natural disaster are also eligible for forbearance.

The institution must request annually from the borrower and have on file any relevant items used to document its reasons for granting forbearance, including:

- verification from the institution in which the borrower is presently enrolled regarding his or her enrollment status;

- evidence of continuing financial need of the enrolled student;

- copies of medical bills and correspondence from the attending physician pertaining to the financial burden of prolonged illness;

- unemployment records and related documentation; and

- correspondence from reputable persons or agencies verifying any hardship or disaster.

The institution must notify the borrower in writing of the approval (or disapproval) of a request for forbearance. The basis for the decision must be thoroughly documented in the borrower's file.

The period for which a borrower may be granted forbearance is limited by the legal requirement that the repayment period for an HPSL or NSL not exceed 10 years. Since periods of forbearance count as part of the 10-year repayment period, the institution must continue to accrue interest on the outstanding balance of the loan and must make every effort to keep forbearance periods to a minimum. Otherwise, the borrower may be faced with unmanageable payments as a result of the reduced repayment period.

CANCELLATIONS

Death. Under 42 CFR 57.211 and 311, the unpaid balance of an HPSL or NSL and accrued interest may be canceled upon the death of the borrower. To grant cancellation, the institution must obtain a death certificate or other official proof of death that is conclusive under state law, which is then retained in the borrower's file for audit purposes.

Permanent and total disability. A borrower is entitled to cancellation of a loan in the event of permanent and total disability, which is defined as being unable to engage in any substantial gainful activity because of a medically determined impairment that is expected to continue for a long time or result in death. The HHS Secretary reviews and, based on the institution's recommendation, approves an application for loan cancellation based on disability.

HHS formally notifies the institution of the HHS Secretary's decision; the institution is responsible for notifying the borrower of the decision. The institution must retain the written notification of the decision on file for audit and other review purposes; it must report the amount of the loan canceled on its next annual operating report.

Employment as a registered nurse. NSL borrowers who received loans prior to September 29, 1979, are eligible for certain cancellations based on full-time employment as a registered nurse. The Nursing Training Amendments of 1979 repealed these kinds of cancellations for borrowers who received NSLs after that time.

To be eligible for loan cancellation based on full-time employment as a registered nurse, an NSL borrower must be licensed as a registered nurse by the state in which he or she is employed or must have completed the steps necessary for such registration. In addition, the borrower must be employed full time for a complete year (12 consecutive months) as a registered nurse (including teaching in any field of nurse training or serving as an administrator, supervisor, or consultant in any field of nursing) in a public or nonprofit private agency, institution, or organization (including neighborhood health centers).

A qualifying borrower who received an NSL between November 18, 1971, and September 29, 1979, is entitled to receive cancellation of up to 85 percent of his or her NSL(s). The loan is canceled at a rate of 15 percent for each of the first three complete years of service and 20 percent for each additional year of service (based on the amount of the loan plus interest that is unpaid), up to 85 percent.

A qualifying borrower who received an NSL prior to November 18, 1971, also may receive cancellation for full-time employment as a registered nurse, but only up to 50 percent of the total amount of the loan plus interest. In these cases, cancellation occurs at a rate of 10 percent for each complete year of eligible service. In addition, a borrower with an NSL awarded prior to November 18, 1971, is entitled to full cancellation of his or her loan based on service as a registered nurse in a qualifying shortage hospital. The most recent list of shortage hospitals was published in the *Handbook for Loan Cancellation Benefit List of Hospitals* (1972).

The beginning date of the first year for which the borrower is considered eligible for loan cancellation is the date he or she begins employment or takes the examination to be licensed as a registered nurse, whichever is later. A borrower formally meets the licensure eligibility requirement when he or she passes the examination. A borrower who fails the examination is ineligible for loan cancellation. If the borrower retakes the examination and passes it, the beginning date for calculation of cancellation benefits is the date the examination is retaken, or the beginning date of employment, whichever is later.

Although a registered nurse position might normally be considered to consist of a work schedule of 40 hours a week, it may be more appropriate to consider "full-time employment" in terms of the number of hours defined as full-time by the employer. This could be determined by comparing the position with equivalent positions in the same organization in which persons are considered to be working full-time. Thus, the term "full-time" reflects working arrangements as found in an organization for all equivalent nurse positions. For those persons holding teaching positions, or for registered nurse positions within school systems, a "complete year" would be the complete academic year of the institution in which the nurse is employed. In no case, however, should a position requiring less than 30 hours of duty during a regular work week be considered sufficient to qualify as "full-time."

A borrower serving as a registered nurse in a voluntary (that is, unpaid) capacity can still be considered for partial cancellation of his or her loans. Institutions must exercise caution in determining eligibility for volunteer work because of the tendency of volunteers to work less than full-time in this capacity. The school must ensure that requirements are met.

In order to claim entitlement to loan cancellation for service as a registered nurse, an NSL borrower must file a certified "Request for Partial Cancellation of Loan" (HRSA-520) with the institution that made the loan for each year of qualifying service. Upon receipt of this form, the school must evaluate the request and complete the form, indicate the amount of cancellation (principal and interest), and return a copy to the borrower as a receipt that cancellation has been approved.

When an NSL borrower is determined eligible for cancellation as a registered nurse, the institution specifies the amount to be canceled by establishing the base amount of the loan and interest that has accrued during the service period for which cancellation benefits are to be provided. The base amount is the amount of principal actually owed by the borrower on the first day of employment as a full-time nurse eligible for cancellation, or the amount he or she would owe at that time had all repayments due under terms of the note been made, whichever is less. The first day of employment is the first day of the first complete year of employment that qualifies for cancellation. The annual rate of cancellation is applied to the base amount. The base amount remains fixed for the duration of the repayment period, even if the borrower leaves nursing employment and at some later date resumes employment as a registered nurse.

The borrower must make an annual payment of the difference between the scheduled installment and the amount canceled when the amount canceled for a year of employment as a registered nurse is not sufficient to cover the required installment of principal, and failure to make payment would result in payments extending beyond the maximum 10-year repayment period.

Health professions practice in a shortage area. Borrowers who received HPSLs to study medicine, osteopathy, dentistry, or optometry prior to November 18, 1971, may receive cancellation of their HPSL(s) for practicing medicine in a *health manpower shortage area* or in a rural shortage area characterized by low family income. A borrower practicing in a health manpower shortage area, as designated by HHS, is entitled to cancellation of up to 50 percent of the amount of the loan that remains unpaid on the first day of practice, plus accrued interest. The loan is canceled at the rate of 10 percent for each year of practice in this shortage area.

A borrower practicing in a *qualifying rural shortage area* is entitled to cancellation of up to 100 percent of the amount of the loan that is still unpaid on the first day of practice, plus accrued interest, at the rate of 15 percent for each year of practice in the area.

A borrower seeking cancellation for practice in a shortage area must file certified "Request for Assurance" and "Request to Enter an Agreement for Practice in a Shortage Area" forms with the lending institution before beginning the practice. At the end of each 12 consecutive months of practice, the borrower must prepare and submit a "Request for Partial Cancellation of Loan" and a "Notice of Practice in a Shortage Area". The state health authority must certify that the borrower's practice is helping to meet the need for, and to alleviate the shortage of, the performed services and must forward the completed request to the lending institution for processing.

The institution must inform an eligible HPSL borrower of these cancellation benefits and provide him or her with the necessary application forms. Retroactive cancellation of HPSLs is not granted. If a borrower fails to apply for loan cancellation according to the required procedures in a timely manner, cancellation cannot be granted.

When the amount canceled is less than the required annual payment, the borrower must send the institution a check or money order in the amount of the difference. The borrower is entitled to cancellation of the interest that accrues on the unpaid balance of the loan during the year of practice in the shortage area.

POSTPONEMENTS

Repayment of an HPSL or NSL may be postponed only if a borrower is planning to claim partial cancellation of his or her loan. The borrower must file a "Request for Postponement of Installment Payment" (HRSA Form 36-17 for

NSLs and HRSA Form 36-9 for HPSLs) at least annually. In the case of HPSLs, a request for postponement must be accompanied by validated copies of the borrower's forms used to request cancellation to assure the institution that the borrower is entitled to such a postponement.

When an institution receives a borrower's request for postponement, it is authorized to postpone cancellation of the required installment until the end of the borrower's complete year of practice. If the borrower does not complete the year of practice, he or she is required to pay the amount due according to the repayment schedule agreed to by the borrower.

LOAN CANCELLATION REIMBURSEMENT

In certain circumstances, subject to the availability of federal funds, HHS will reimburse an institution for the cancellation of a student's HPSL or NSL.

Service in a shortage area. Federal repayment of HPSLs and NSLs in exchange for practice in a shortage area is administered by the Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, at HHS. Institutions should contact this office for current information on the availability of funds for reimbursement.

Failure to complete studies. The Public Health Service Act, as amended, provides authorization for the HHS Secretary to repay all or part of an HPSL or NSL if the borrower is from a low-income or disadvantaged family that is considered exceptionally needy and the borrower has failed to complete his or her studies. These provisions may help remove indebtedness if, for academic, economic, or medical reasons, a borrower is forced to leave school before completing his or her studies. As of December 1990, federal funds were not available for this provision.

If federal funds are available for repayment, application kits can be obtained directly from HHS by borrowers whose loans may be eligible for repayment. Only borrowers who ceased to be students on or after November 18, 1971, are eligible and only loans executed on or after that date are eligible for repayment; the lending institution must certify that these criteria are met. The borrower must certify that the loans were used solely for educational purposes and that he or she has not resumed and does not intend to resume such studies within two years of the date of application. The borrower's family income cannot exceed low-income levels published annually by HHS and the family can have no substantial net financial assets.

Loan Collection

HPSL and NSL regulations require that overdue loans be referred for collection once an institution has completed all notifications to a past-due borrower. Institutions have the option of using in-house collection staff or one or more commercial collection firms and the option of deciding how long to leave an account with a collection firm. For each account that is referred for collection, the school must document the date of referral, the results of the collection efforts, the date the account is returned to or recalled by the school if the collection firm is unsuccessful in collecting the account in full, and the date the account is brought current (if applicable). In addition, a copy of the procedures followed by in-house collection staff or a copy of the contract with a commercial collection agency must be on file at the institution.

If an institution uses an outside firm, it should select one that is established and reputable. Fees charged by a collection firm, if charged to the HPSL or NSL Fund, may not exceed normal and reasonable collection fees for the area in which the institution is located. A collection cost of between 40 and 50 percent is acceptable if legal proceedings are involved and if this is normal and reasonable for the area.

CHARGES TO THE FUNDS

As a general rule, the institution must bear most billing and collection costs under the HPSL and NSL programs. Costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by HHS Secretary, any other collection costs that exceed the usual expenses incurred in the collection of these loans may be charged to the revolving loan funds.

Costs arising from collection efforts associated with a borrower that has loans from both the FCC Fund and the Federal Capital Loan (FCL) Fund must be prorated between the two funds. (The FCL Fund is a separate program under which HHS loans funds to an institution, which in turn loans the funds to students. As borrowers repay the FCL Fund, the institution reports and sends the funds to HHS quarterly. Once loans are fully repaid, the FCL Fund for a particular school is reduced to zero.)

Costs of litigation arising in connection with collecting any obligation to the HPSL or NSL Fund should be charged to the borrower if possible, but may be paid out of the appropriate fund.

Costs *not* chargeable to the revolving funds include those used to employ individual contractors or agents to handle routine billing and collection duties. These tasks are expected to be performed by the lending institution's own personnel in its exercise of due diligence.

Earned interest. All schools are required to deposit any interest earnings resulting from HPSL and NSL cash balances in the respective fund. In December 1989, HHS published a notice of proposed rulemaking (NPRM) that would require institutions to deposit all HPSL/NSL cash balances in a special account that is interest bearing and insured by the federal government or to invest such balances in income-producing securities issued or guaranteed by the federal government. As of March 1991, final rules associated with the NPRM have not been issued.

Every institution should establish appropriate accounting controls and procedures to ensure that all interest earned is deposited in the HPSL or NSL Fund. In addition, the institution should be familiar with federal regulations governing the treatment of excess cash in the revolving funds.

LITIGATION

A school is required to litigate against a defaulted borrower after all other collection efforts have failed unless the school determines, subject to the approval of the HHS Secretary, that litigation would not be cost-effective. This provision does not prohibit a school from litigating before all other collection efforts have been exhausted, but requires litigation, unless it is not cost-effective, before the school can be considered to have completed its collection efforts.

In order to determine if litigation is cost-effective, a school must consider the costs that it can reasonably expect to incur as a result of litigating compared with the amount that it can reasonably expect to recover from the borrower. If the school determines that litigation is cost-effective, the school must document the dates on which litigation is initiated and completed, the results, and any further efforts taken after litigation to collect the loan. If the school determines that the cost of litigation is expected to exceed the amount recovered, the school must document how this determination is made and is not required to litigate. The HHS Secretary may determine, however, that litigation would be cost-effective and, in this case, the school would be required to conduct litigation.

Institutions using outside collection firms will find that many firms can handle routine legal proceedings; however, no firm should be allowed to proceed with litigation without the institution's written consent for each account to be litigated. Legal fees must be reasonable and the total cost of litigation must not exceed the principal balance due. All legal fees must be documented and itemized, showing hours worked and dates of actual court appearances.

CREDIT BUREAUS

Every institution participating in the HPSL or NSL program must become a member of one or more credit bureaus and report any HPSL or NSL more than 120 days past due to the credit bureau(s). This requirement does not preclude reporting delinquent accounts to a credit bureau before they are 120 days past due if the school believes that an earlier time frame is more effective. Schools must maintain a copy of a credit bureau report that lists the delinquent status of the HPSL or NSL account, or maintain other documented evidence supporting the fact that the account has been reported to a credit bureau. In addition, the school must indicate in the borrower's records the date the account is reported to a credit bureau.

In determining which credit bureau to join, a school must consider the geographic location(s) most frequented by its borrowers. Although regulations do not specify the number of credit bureaus that a school must join, HHS recommends that a school join at least two credit bureaus to obtain local coverage as well as regional and national coverage in its efforts to locate borrowers for whom no current address is available.

Uncollectible Loans/Write-Offs

An uncollectible HPSL or NSL may be written off upon review and determination by HHS that the institution exercised due diligence in its attempts to collect the loan. Once a school has completed the due diligence steps and determined that a loan is uncollectible, the institution may submit documentation to support a request for write-off of the loan to HHS. Approval to write off loans is granted on a case-by-case basis. The institution must supply HHS with documented evidence of its performance of due diligence. This evidence should include:

- verification of entrance and exit interviews;
- a copy of the defaulted promissory note;
- copies of correspondence during grace and deferment periods;
- bills and follow-up correspondence;
- documents associated with collection activities (including the use of commercial firms);
- notification to credit bureaus; and
- copies of legal documents as evidence of litigation, where appropriate.

Additional evidence of efforts at loan collection should be included with the request for write-off. A summary sheet for each loan, indicating date(s) of the loan(s), date of beginning of repayment, and dates of specific due diligence and other institutional actions will expedite the review by HHS. HHS may request further information from the institution in order to determine approval or disapproval of the write-off. When reviewing a request for a write-off, HHS takes into consideration the prescribed due diligence procedures in effect when the loan entered repayment and any subsequent actions taken by the institution in attempting to collect the loan. Write-off requests should be submitted to the Health Resources and Services Administration, Division of Student Assistance, Program Analysis and Accounting Branch.

Many institutions do not keep copies of grace period notices and routine billing notices. In these cases, a historical summary sheet that documents the dates that notices and billings were sent out must be provided for each loan, showing all steps taken in attempting to collect the loan.

If the write-off is approved by HHS, the institution will be notified to that effect and the uncollectible loan will be written off proportionately between the school and the federal government. If HHS disapproves a write-off request because of failure to exercise due diligence, HHS will inform the institution of the specific reason(s) for disapproval. A school may then request a reevaluation of the decision if it submits additional evidence of due diligence.

For HPSLs that became uncollectible before August 1985 and NSLs uncollectible before January 1983, HHS may not require a school to reimburse the loan funds. For loans that became uncollectible after these dates, the institution is responsible and may subject these accounts to additional collection efforts. In addition, the institution must determine the time at which it will reimburse the appropriate loan fund for loans that cannot be collected from the borrower or approved for write-off by HHS. Each institution should be aware that as long as it elects to carry an uncollectible loan on its books (rather than reimburse the appropriate fund for the uncollectible amount), it must continue to report the loan as a defaulted account. In addition, interest will continue to accrue on the unpaid principal balance as it does on any other loan in repayment status. Under the rules proposed by HHS in an NPRM issued in December 1989, uncollectible HPSLs and NSLs would be subject to additional requirements.

Performance Standards

HPSL and NSL regulations set performance standards that require health professions schools and nursing programs participating in the loan programs to achieve default rates no greater than 5 percent by June 30, 1984, and June 30, 1986, respectively. The default rate for each school is calculated by dividing the sum of principal outstanding on all defaulted loans by the total principal amount loaned for all matured loans. Any account past due by more than 120 days is considered in default. The regulations also established a series of performance checkpoints for schools unable to reach or maintain the 5 percent performance standard by June 30 of any year. If a school meets the 5 percent performance standard on June 30, its participation in the HPSL or NSL program may continue without respect to fluctuations in its default rate until the completion of the next annual operating report.

Probationary status. An institution that fails to meet the 5 percent performance standard for either the HPSL or the NSL program by June 30 is allowed to continue participating in the program, but in probationary status. At the end of each six-month period thereafter, a school in probationary status must have reduced its default rate to 50 percent of the rate it was required to achieve by the end of the previous six-month period or 5 percent, until it reaches the 5 percent performance standard. When an institution in probationary status has reduced its delinquency rate to 5 percent or less, it enters compliance status.

Suspended status. A school in probationary status that fails to meet any of the performance checkpoints described above enters suspended status. A school in suspended status must:

- place HPSL or NSL revolving fund monies and all subsequent collections in an insured, interest-bearing account;
- make no new loans or loan disbursements; and
- reduce its default rate to 50 percent of the rate that it was required to achieve prior to entering suspended status or meet the 5 percent performance standard by the end of the six-month period of suspended status.

Terminated status. A school in suspended status that fails to achieve the final performance checkpoint described above enters terminated status. An institution in terminated status is required to:

- return to the HHS Secretary the federal government's proportionate share of the HPSL or NSL account; and
- continue to collect outstanding loans and return to the Secretary the federal government's share of future collections on a quarterly basis.

As soon as a school in terminated status has met the 5 percent performance standard, it may apply to reenter the HPSL or NSL program. If eligible, the institution will be admitted and allowed to resume making loans from future collections and any subsequent federal capital contributions.

Chapter 4

Guaranteed Student Loan Programs

The term "guaranteed student loan program" refers to a variety of programs authorized under Part B of Title IV of the Higher Education Act of 1965, as amended. These programs include Supplemental Loans for Students, PLUS Loans, Consolidation Loans, and Stafford Loans (which, somewhat confusingly, were originally called "Guaranteed Student Loans"). Operating through state and private nonprofit guarantee agencies, guaranteed student loan (GSL) programs make low-interest, long-term loans available to students attending participating postsecondary institutions.

Loans offered under the GSL programs make use of private loan capital supplied almost entirely by commercial lenders such as banks, credit unions, and savings and loan associations. Educational institutions and state guarantee agencies may also serve as GSL lenders. The loans are guaranteed by individual state or private nonprofit guarantee agencies and the principal is reinsured and the interest is subsidized by the federal government.

Federal Insured Student Loans and Stafford Loans

The original authorizing legislation for the GSL programs permitted the establishment of two such programs. The first program encouraged state and private nonprofit agencies to establish loan insurance programs for lenders. Loans "guaranteed" by these entities were known as "Guaranteed Student Loans." Congress also provided for a second program of loan insurance that operated at the federal level. The Federal Insured Student Loan (FISL) program was set up as an alternative program to serve lenders who did not have reasonable access to the state guarantee agency loan programs. During the early years of the programs and until the mid-1970s, FISLs were as common as Guaranteed Student Loans. Over subsequent years, however, as the guarantee agency programs grew and the authorizing legislation was amended, the FISL program declined in loan volume and was eventually phased out in 1984. The name of the survivor, the Guaranteed Student Loan program, was officially changed on July 1, 1988, to the Robert T. Stafford Student Loan program.

PLUS Loans and Supplemental Loans for Students

The Education Amendments of 1980 established the PLUS program, which provides loans for parents who want to borrow to help pay for their children's education. Initially limited to parents of dependent undergraduate students in 1980, borrower eligibility was extended in 1981 to include independent undergraduates and graduate and professional students. In 1986, however, Congress restricted PLUS loans to parents of dependent undergraduate and graduate students and established a separate program for students, the Supplemental Loans to Students (SLS) program. SLS loans are available to independent undergraduate, graduate, and professional students as well as certain dependent undergraduates.

Consolidation Loans

At present, loans made under the FISL, Stafford, Perkins, SLS, HPSL, and PLUS (for students, not parents) programs may be consolidated if those loans are in grace or repayment status. The current Consolidated Loan program was authorized under provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985. The law permits the Student Loan Marketing Association (Sallie Mae), state agencies, and most lenders to enter into agreements with the ED Secretary or a guarantee agency to consolidate the covered loan programs. (For a more detailed discussion of loan consolidation see Chapter 1.)

GSL Loan Terms

Table 4-1 provides an overview of GSL program interest rates and also includes information on grace, repayment, and deferment periods as of September 30, 1989.

The GSL program regulations are embodied under 34 CFR 682.

Institutional Responsibilities

Provisions covering virtually all aspects of the various GSL programs have been modified and, in most cases, substantially expanded since the early 1980s. This trend is expected to continue under the forthcoming reauthorization by Congress of the Higher Education Act. Recent amendments to the law covering borrower eligibility, loan disbursement, and due diligence requirements, among others, were enacted by Congress with the intent to reduce federal government administrative costs and curb alleged abuses in the GSL programs. In addition, new policy concepts, such as the use of pro-rata refund policies introduced by the Department of Education (ED) in its default management initiative, have established new avenues of regulation thought once to be solely within the purview of an institution's administration. With the advent of Appendix D (Default Reduction Measures) in the regulations of June 5, 1989, a significant

Table 4-1
Interest Rate Paid on Student Loans by Borrower or the Federal Government

			In-School and Grace Periods[a]			Repayment Period		Deferment Period	
Program Component	GSL Program Loan Interest Rate	Date Loan Disbursed	Percent Paid by Fed. Govt.	Percent Paid by Borrower	Length of Grace Period	Percent Paid by Fed. Govt.	Percent Paid by Borrower	Percent Paid by Fed. Govt.	Percent Paid by Borrower
Stafford	6% loans[b]	65-08/02/68	6	0	9-12 months	3	3	3	3[c]
	7% loans	08/03/68-12/14/68	7	7	9-12 months	3	4	7	0
		12/15/68-present	7	0	9-12 months	0	7	7	0
	8% loans[d]	09/13/83-present	8	0	6 months	0	8[e]	8[e]	0
	9% loans[f]	01/01/81-present	9	0	6 months	0	9	9	0
PLUS or SLS	9% loans	01/01/81-09/30/81	N/A	N/A	N/A	0	9	0	9
	12% loans	11/01/82-06/30/87	N/A	N/A	N/A	0	12	0	12
	14% loans	10/01/81-10/31/82	N/A	N/A	N/A	0	14	0	14
	Variable %[g]	07/01/87-present	N/A	N/A	N/A	0	Variable	0	Variable
Consolidated	Weighted Average %[h]	10/17/86-present	N/A	N/A	N/A	0	Weighted Average	0	Weighted Average

Notes:

[a] There is no in-school grace period on PLUS, SLS, and Consolidated Loans.

[b] Loans made under the National Vocation Student Loan Insurance Act of 1965 (now repealed).

[c] For any period of deferment occurring after 12/15/68, the federal payment is a maximum of 6 percent (depending on the interest rate stipulated in the note) and the borrower pays no interest.

[d] Loans for new (first-time) borrowers for periods of instruction beginning on or after 9/13/83; subsequent loans are at the same interest rate.

[e] Interest rate for new (first-time) borrowers for periods of instruction beginning on or after 7/1/88 is 8 percent through the fourth year of repayment and 10 percent thereafter.

[f] Loans for new (first-time) borrowers for periods of instruction beginning on or after 1/1/81 but before 9/13/83; subsequent loans are at the same interest rate.

[g] The variable interest rate for PLUS and SLS Loans applies to each 12-month period (July 1-June 30) during the life of the loan. The variable interest rate also applies to fixed-rate PLUS and SLS Loans that have been refinanced.

[h] The interest rate on Consolidation Loans is the greater of 9 percent or the weighted average of the interest rates of the loans discharged by consolidation, rounded to the nearest whole percent.

Source: Table prepared by U.S. Department of Education, OPE/OSFA/DPPD, Guaranteed Student Loan Branch, Analysis Section.

amount of pressure has been placed on institutional administrators; even schools that are not required to comply with the appendix are strongly encouraged in the regulations to take on these additional requirements voluntarily.

The primary responsibilities placed on postsecondary educational institutions that participate in the GSL programs are described below. The focus in this chapter is on recent regulations that mandate the conduct of entrance and exit interviews and establish performance standards that define institutional participation according to a school's default experience; this chapter does not address the special requirements of the relatively small number of schools that serve as GSL lenders.

Significant attention has been given during recent years by federal lawmakers to the enormous size of the aggregate GSL portfolio and the costs borne by the federal government in its administration of the GSL program. The total number of GSLs as of FY 1989 was 48.2 million, valued at $101.7 billion. For the same period, the net default rate was 9.6 percent.

Despite the fact that (as of December 1990) the overwhelming majority of postsecondary institutions have neither the authority to originate any of the "guaranteed" student loans nor the attendant responsibility for collection of these loans, institutions are being held more accountable for GSL program defaults. The final regulations issued on June 5, 1989—aimed primarily at institutional management and administration of the GSL programs—set in motion ED's default management initiative. Although the initiative as a whole is intended to cover all participating groups—borrowers, postsecondary institutions, lenders, guarantee agencies, and federal and state governments—the first steps taken by ED underscore its serious concern about the practices and procedures undertaken by institutions that participate in the GSL programs.

THE JUNE 5, 1989, REGULATIONS

The default management regulations set forth requirements for all institutions participating in the GSL program regardless of their default rate. Several of the rules affect the delivery of loan proceeds to the student. Multiple disbursement requirements were established for Stafford and SLS loans and restrictions were set on late disbursements for certain borrowers. In addition, institutions were required to provide the lender, on behalf of each student borrower, a disbursement schedule that met Stafford and/or SLS loan disbursement requirements.

The new rules make mandatory a requirement to conduct "initial counseling sessions" (entrance interviews) with each Stafford Loan or SLS borrower, either in person or by videotape presentation, prior to the release of the first disbursement of funds. The regulations also specify the general content of the interview. In a similar vein, the regulations establish specific rules for the conduct of "exit counseling" (exit interviews) with borrowers.

The most dramatic of the new requirements, however, is the implementation of performance standards for institutions participating in the GSL programs. In essence, the June 5 rules assert that if an institution fails to demonstrate an acceptable default rate (in this circumstance, a fiscal year cohort default rate defined in the law) or to take required steps to reduce an unacceptable default rate, that institution will face limitation, suspension, or termination (LS/T) action—that is, it can be dropped from the GSL program.

The institution's fiscal year cohort default rate is based on the percentage of current and former students who enter repayment on Stafford and/or SLS loans received for attendance at the institution in a fiscal year and who default before the end of the following fiscal year. For institutions with fewer than 30 students entering repayment status in a given year, the average default rate for the three most recent years is used.

Stafford Loans enter repayment status upon conclusion of the student's grace period, which normally is six months after a student drops below half-time status at a participating school. Lenders must comply with the due diligence requirements. When an account reaches 180 days past due, a lender may file a default claim with the guarantee agency. If the agency is satisfied that the lender adhered to prescribed due diligence requirements, the agency pays the lender and the agency takes over the collection process.

In addition to the potential for administrative sanctions under the LS/T provisions, schools with "high" default rates are now subject to additional administrative requirements. For example, institutions with default rates above 20 percent are required to implement a default management plan. For institutions with rates exceeding 30 percent, there are restrictions on Stafford and SLS borrowing, delayed certification of loans to certain borrowers, delayed disbursement to first-time borrowers, and a requirement to institute a pro-rata refund policy. Stiffer requirements are set for institutions with default rates in excess of 40 percent; schools with rates above 60 percent may be subject to immediate LS/T action.

A copy of the June 5, 1989, regulations is provided in Appendix B.

ENTRANCE INTERVIEW

The June 5 regulations require all schools to provide individual pre-loan counseling to first-time borrowers. The regulations concerning counseling are very specific. Except in the case of a correspondence school, a school must conduct counseling with every Stafford Loan or SLS borrower, either in person or by videotape presentation. The school must conduct this counseling prior to the first disbursement of the first Stafford or SLS loan made to the borrower for attendance at the school. The institution must ensure that a counselor with knowledge of Title IV programs is available to answer the borrower's questions regarding those programs. A correspondence school must provide the borrower with written counseling materials by mail prior to releasing loan proceeds.

When conducting the initial counseling, the school must:

- emphasize to the borrower the seriousness and importance of the repayment obligation that the borrower is assuming;

- describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

- emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with, or does not receive, the educational or other services that the school offers.

Additional matters that the ED Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D of the regulations.

DELIVERY OF GSL PROGRAM FUNDS

Usually, a student's loan application is certified by the financial aid office. The student completes an application received at his or her local bank or school and, after the school and guarantee agency certification, the lender draws a check payable to either the student and the school or just the student. The check is then sent to the school. The law now requires that the school, on behalf of its students, provide the lender with a schedule for disbursement of loan proceeds. Most lenders require schools to complete a section on revised application forms describing a schedule for disbursements. The loan must then be disbursed by the lender in accordance with that schedule. For loans certified after January 1, 1990, the lender may not disburse a Stafford or SLS loan for which a schedule is required and that is required to be disbursed in multiple parts without first receiving the disbursement schedule. The business office should coordinate the scheduling of disbursement dates with the financial aid office. Disbursement dates should be set for one or two weeks prior to the start of the quarter or semester to allow schools sufficient time to process and record the awards for delivery to students. PLUS checks are made payable to the parent (borrower) and mailed directly to the borrower.

If the school receives the loan proceeds by means of a check payable only to the student, the school shall promptly deliver the check to the student, after the student has registered, up to 10 days before the first day of classes of the period of enrollment for which the loan was intended.

If the school receives the loan proceeds by means of a check payable to both the student and the school, the school shall:

- after the student has registered, endorse the check on the school's own behalf and promptly deliver it to the student up to 10 days before the first day of classes of the period of enrollment for which the loan is intended; or

- obtain the student's endorsement on the check, endorse the check on the school's behalf, and, after the student has registered, credit the student's account up to three weeks before the first day of classes of the period of enrollment for which the loan is intended, deduct institutional charges for the same period of enrollment, and deliver the remaining proceeds to the student up to 10 days before the first day of classes.

If the school receives the loan proceeds by means of an electronic funds transfer (EFT) to an account of the school on behalf of the borrower, the school shall obtain the student's written authorization for the release of funds, and, after the student has registered but not more than 30 days prior to the first day of classes of the period of enrollment for which the loan was intended, either:

- credit the student's account up to three weeks before the first day of classes of the period of enrollment for which the loan is intended, and retain the balance after deducting any institutional charges if written permission from the student was obtained; or

- credit the student's account up to three weeks before the first day of classes of the period of enrollment for which the loan is intended, deduct institutional charges, and deliver the remaining balance to the student up to 10 days before the first day of classes of the period of enrollment for which the loan is intended.

If, for some reason, a student is not eligible for a Stafford Loan or SLS loan after the check has been made out or funds have been received, the loan proceeds must be returned to the lender with an explanation of why it has been returned.

- Where the school has not received a required financial aid transcript, the school must return the check or loan proceeds within 45 days of receipt of same to the lender with an appropriate explanation.

- If the school determines that the student has not registered, the school must return the check or loan proceeds to the lender with an appropriate explanation within 30 days of this determination.

If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or if the school is unable to document that the student attended class during that period, the school shall return to the lender:

- any loan proceeds credited directly by the school to the student's account; and

- any loan proceeds delivered to the student and subsequently paid by the student to the school.

DELAYED DISBURSEMENT

As part of the default management initiative, institutions with Stafford or SLS default rates exceeding 30 percent were required to delay delivery of the first disbursement of a loan made to a student borrowing for the first time at the school until the borrower had attended for at least 30 days during the period of enrollment.

Subsequent changes in the law held that schools extend the delayed disbursement provisions to all first-time SLS borrowers effective January 1, 1990, and all first-time Stafford borrowers as of January 1, 1991.

During the 30-day delay period, the institution may not obtain the borrower's endorsement on the check or obtain the student's approval to release the funds, nor deliver loan proceeds to the student or credit them to the student's account.

PROCESSING A LATE DISBURSEMENT

A disbursement is considered late if the school receives the student's loan proceeds after the end of the period of enrollment for which the loan was made, or before the end of the academic period for which the loan was made after the student has ceased to be enrolled at the school on at least a half-time basis.

If a late disbursement is accompanied by a notice from the lender that the late disbursement has been approved by the guarantor, then the school shall follow the disbursement procedures above as if the student had already registered.

If a late disbursement is not accompanied by a note from the lender that the late disbursement has been approved by the guarantor, then the school shall return the loan proceeds to the lender within 30 days of its determination that a late disbursement has occurred and so advise the lender with appropriate information about the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis. The school shall advise the student that the lender may redisburse funds for the student's cost of attendance incurred before the existence of the conditions causing a late disbursement process.

In the past, guarantee agencies required schools to complete a Late Disbursement Request form before disbursing any Stafford Loan funds received after the end of a loan period. Now, many guarantee agencies allow lenders to disburse Stafford Loan funds in time to arrive at the school no later than 60 days after the last day of the loan period listed on the loan application. Depending on the time limits established by individual guarantee agencies, schools are no longer required to complete a Late Disbursement Request Form for each loan delivered under these circumstances. Whenever a school receives Stafford Loan funds after the loan period has ended, the school may deliver the funds to the student only after verifying that the borrower was enrolled at least half-time for the entire loan period.

The new policies on late disbursement do *not* apply in three cases: where the school receives the loan advance more than 60 days after the student's loan period has ended; where the funds arrive prior to the end of the loan period, but where the student has withdrawn or dropped below half-time status; or where the funds arrive within 60 days following the end of the loan period, but where the student did not maintain half-time status for the entire loan period. In these cases, the school must return the funds to the lender and may request redisbursement of some or all of the funds by completing a Late Disbursement Request form.

Regulations prohibit delivery of the proceeds of a late first disbursement of an SLS loan—a first disbursement received by the school after the borrower has left school.

EXIT COUNSELING

A school must conduct in-person exit counseling with every Stafford Loan or SLS borrower shortly before the borrower ceases at least half-time study at the school, with the following exceptions:

- In the case of a correspondence school, the school should provide the borrower with written counseling materials by mail within 30 days after the borrower completes or terminates the program.

- If the borrower withdraws from the school without the school's knowledge or fails to attend an exit counseling session as scheduled, the school must mail written counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

When conducting the exit counseling, the school must:

- provide the borrower with general information regarding the average indebtedness of students who have obtained Stafford Loans or SLS loans for attendance at that school;

- inform the borrower of the average anticipated monthly repayment for those students based on that average indebtedness;

- review for the borrower available repayment options (for example, loan consolidation or refinancing); and

- suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower.

The exit counseling session must also repeat all the information provided during the entrance interview.

RECORDKEEPING, AUDITS, AND REPORTS

A school must maintain student loan records containing:

- the name of the borrower and a copy of the loan application;

- if the PLUS borrower is a parent, the name of the student on whose behalf the loan was made;

- the name and address of the lender;

- the amount of the loan and the period for which the loan was intended;

- the data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

- the amount of the student's tuition and fees for that period, the date the student paid the tuition and fees, and the date the loan check was received and disbursed to the student; and

- for Stafford Loans, the data used to determine the student's Adjusted Gross Family Income and Expected Family Contribution.

For Stafford Loans and SLS loans, loan records must also contain:

- the date the school received each loan disbursement and the amount of the disbursement;

- the date the loan check was endorsed by the school;

- the date(s) of transmittal of loan proceeds to the student; and

- a record of the student's job placement, if known.

When funds are received, the school should enter the fund award information for each student on a computer file. This will allow the school to produce automatically a student "signature or release card," mailing notices or lists of aid availability, and a list of checks or EFTs that are undisbursed after 21 days. This 21-day list can be used to generate a notice or telephone call that tells students of the deadline for claiming aid and provides a record of those unclaimed or ineligible awards, which must be returned to lenders after 30 days.

Each school must also establish a fiscal and administrative recordkeeping system that may be maintained in computerized or microfilm form. These records must be kept for each student who graduates, withdraws, or fails to enroll at least half time for five years following the last date of the period for which the loan was intended. Copies of reports and other forms must be kept for five years after their completion.

A school must have an audit performed at least once every two years, covering the period of time since the previous audit. The school must allow ED or a guarantee agency to audit school records periodically to determine compliance with the applicable regulations. Finally, the school must comply with various ED reporting requirements, including the timely completion of a Student Confirmation Report from ED or a guarantee agency.

Pro-Rata Refunds

The June 5 regulations require that every institution participating in the GSL programs have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board, and other charges to a student who received a Stafford or SLS loan, or whose parent received a PLUS program loan on behalf of the student.

The regulations under 34 CFR 682.606 identify the characteristics ED requires for a refund policy to be considered "fair and equitable." In general, a policy meets these criteria if it conforms to applicable state law and specific refund standards set by the institution's nationally recognized accrediting agency and is approved by ED. The regulations support the use of "The Policy Guidelines for Refund of Student Charges" issued by the American Council on Education in August 1979 as a self-regulation initiative, among other model policies.

The pro-rata refund policy is a mandatory requirement for institutions that ED determines have a fiscal year cohort default rate in excess of 30 percent. As defined in the ED regulations, a pro-rata refund is a refund that is based on that portion of a student's cost of attendance fees attributable to the period of enrollment remaining after the student withdraws from school, after subtraction of certain fees.

A student is entitled to a pro-rata refund if the student's last day of attendance is before the earlier of either the half-way point in time for the student's program of study or six months after the beginning of the student's program.

If a student is enrolled in a baccalaureate degree program of four years, the half-way point of his or her program would be two years; thus, the student would be entitled to a pro-rata refund only if he or she dropped out before completing six month's attendance.

ED also encourages institutions with default rates of more than 20 percent and up to and including 30 percent to implement a pro-rata refund policy (and delay certification of loan applications to first-time Stafford Loan and SLS borrowers). According to ED, the agency retains the right to impose these requirements on institutions in this default category should it determine the implementation of the policy would reduce dropout rates.

Appendix D

Appendix D of the June 5, 1989, regulations set forth "default reduction measures" that an institution with a high default rate under the Stafford Loan and SLS programs should use to reduce defaults. The measures are divided into four categories—measures to reduce defaults by dropouts, measures to reduce defaults related to borrowers' difficulty finding employment, measures to improve borrowers' understanding and respect for the loan repayment obligation, and general. The full text of Appendix D is provided in Appendix B of this book.

Endnote

Since 1985, several laws have significantly altered the guaranteed student loan programs. The majority of these statutory changes have been reported to program participants by ED through the publication of "Dear Colleague" letters. With the exception of the June 5, 1989, requirements, final regulations have not been promulgated. On November 20, 1990, ED issued an NPRM to amend the regulations on various statues passed by Congress between 1985 and 1988. In addition, NPRMs will be issued in the future to address legislation passed in 1989 and thereafter.

At present, the most readily available resources on requirements not yet incorporated into the regulations are ED's "Dear Colleague" letters in the *Federal Student Financial Aid Handbook*. It is extremely important that institutions obtain and review these documents in lieu of the final regulations to assess the conformity of their procedures and practices with current law.

Chapter 5

Health Education Assistance Loan Program

The Health Education Assistance Loan (HEAL) program provides federal insurance for educational loans for graduate students in the fields of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, chiropractic, health administration, and clinical psychology. The program, which began in 1978, was authorized by P.L. 94-484. Regulations governing the program are found under 42 CFR 60. The HEAL program is administered by the Division of Student Assistance, Bureau of Health Professions, Health Resources and Service Administration, Public Health Service, U.S. Department of Health and Human Services (HHS).

The basic purpose of the HEAL program is to encourage lenders to provide a "loan of last resort" for eligible health professions students. Loans may also be made to certain nonstudents, such as doctors serving as interns or residents, and for payment of current interest charges accruing on earlier HEALs. HEALs may be made by schools, banks, credit unions, state agencies, and other institutions that meet lender eligibility requirements. HEALs are made primarily by commercial lenders and state agencies, as in the guaranteed student loan programs, with minimal participation of educational institutions as lenders. Lenders are insured by the HHS Secretary in the event of a borrower's death, permanent disability, bankruptcy, or default.

Borrower Eligibility

To be eligible for a HEAL, a student must be a resident of the United States and a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the United States, or a permanent resident or citizen of the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia. The student must be accepted for enrollment as a full-time student, or already be in full-time attendance and good standing at a participating school. In addition, special rules apply to students in certain fields of study; for example, pharmacy students must have satisfactorily completed three years of training towards a pharmacy degree for eligibility. For a medical, dental, or osteopathic student enrolled in a six-year program to be eligible for a HEAL, the student must be enrolled in the last four years of the program. All students applying for HEALs must have presented themselves for, and submitted to, registration if required under Section 3 of the Military Selective Service Act.

Making a Loan

There is an 8 percent guarantee fee payable to HHS, which is deducted from the loan proceeds. A bank will not grant a HEAL in excess of the amount recommended by the school's financial aid officer. In no case will the amount exceed $20,000 per academic year for medicine, osteopathy, dental, veterinary, optometry, and podiatry students, to a maximum of $80,000; and $12,500 per academic year for pharmacy, chiropractic, health administration, clinical psychology, allied health, and public health students, to a maximum of $50,000.

Each loan must be evidenced by a promissory note in a form approved by the HHS Secretary. The lender must explain that the loan must be repaid and that loan proceeds may be used for educational expenses only, such as tuition and other reasonable costs of education such as living expenses, fees, books, supplies and equipment, laboratory expenses, commuting and transportation costs, and insurance premiums charged on the loan.

The lender must disburse the loan proceeds in two or more installments unless the loan is intended to cover a period of not more than one-half of an academic year. The school will indicate the borrower's expenses for the period for which a disbursement should be made.

Institutional Responsibilities

In order to participate in the HEAL program, an institution must enter into a written agreement with the HHS Secretary in which the school promises to observe HEAL regulations. Once a HEAL application is completed by the borrower, the school must:

- accurately and completely fill out its portion of the HEAL application;

- verify information supplied by the student—including, but not limited to, citizenship status, Social Security number, and eligibility requirements—and notify the lender of any discrepancies;

- certify that the student is eligible to receive a loan;

- review financial aid transcripts from previous institutions to determine if the student is in default on any educational loans or owes a refund on any grants, and approve the application only if satisfactory arrangements have been made with previous institutions in case(s) of loans in default or grant refunds due; and

- determine the maximum loan amount based on the student's financial circumstances, other financial aid available to the applicant (information from one of the national needs analysis systems should be used in this determination), and the cost of attendance derived from standard student budgets.

DISBURSEMENT

A lender issues a loan disbursement check or draft payable to the school and the borrower. The student must endorse the check or draft personally, and the school must retain the portion of funds that the student owes to the school and disburse the remaining funds to the student. Institutions must have developed and implemented procedures relating to check receipt and release, keeping these functions separate from the application and approval processes. Institutions are also required to ensure that the amount of the HEAL check(s) does not exceed the approved total amount of the loan and the statutory maximums. The school may receive funds from lenders by means of Electronic Funds Transfer (EFT). In these cases, the funds will be credited directly to the student's account and any balance after institutional charges will be disbursed to the student.

ENTRANCE INTERVIEWS

Schools that participate in the HEAL program must conduct an entrance interview prior to disbursing the first HEAL for a student each academic year. The entrance interview may be conducted in person or through the mail. The school must obtain personal information to aid in locating the borrower in case he or she leaves the school without receiving an exit interview, and must make the borrower aware of his or her rights and responsibilities under the HEAL program.

Borrower rights. The borrower's rights are:

- The lender may not change the terms of the loan once they have been established, unless the borrower consents to any changes.

- The borrower must be provided with a copy of the completed promissory note when the loan is made.

- After the loan is paid in full, the lender must return the original note to the borrower.

- The lender must disburse the loan proceeds in accordance with the rules and regulations on making HEALs.

- Before repayment begins, the lender must provide the borrower with a copy of the repayment schedule.

- If the loan is sold from one lender to another lender, or if the loan is serviced by a party other than the lender, the holder must notify the borrower within 30 days of the transaction.

- The borrower does not have to begin repayment until nine full months after leaving school or an accredited internship or residency program.

- The borrower is entitled to deferment from repayment of the principal and interest installments during qualifying deferment periods. (Note that interest is still accruing. All that is deferred with regard to interest is payment of the interest amounts accruing.)

- The borrower may repay all or any portion of the loan at any time and without penalty.

- The lender is required to allow the borrower to repay a loan according to a graduated repayment schedule.

- In the event of the borrower's death or total and permanent disability, the entire loan obligation will be canceled.

- Forbearance may be granted by the lender in order to assist the borrower in avoiding default.

Borrower responsibilities. The borrower's responsibilities are:

- The insurance premium and all interest charges on the loan required by the lender must be paid by the borrower.

- The borrower must immediately notify the lender in writing in the event of a change of address or name, a change in status of enrollment in a school, internship, or residency program, or a change in deferment status.

- The borrower must repay the loan in accordance with the repayment schedule.

- The borrower may not have a loan discharged under any chapter of the bankruptcy laws during the first five years of the repayment period.

- Under the HEAL statute, a HEAL may not be discharged in bankruptcy during the first five years of repayment. (In addition, the other bankruptcy codes covering student loans also apply.) After that period has elapsed, a HEAL may be discharged only if the court finds that a nondischarge of debt would be unconscionable and upon the condition that the HHS Secretary shall not have waived his or her rights to reduce any federal reimbursements or federal payments for health services under any federal law in amounts up to the balance of the loan.

- If payments are not made on time by the borrower, the total amount to be repaid by the borrower may be increased by additional interest, late charges, attorney's fees, court costs, and other collection charges. Further, for health services provided by a defaulted borrower, the HHS Secretary may reduce federal reimbursement amounts due to that defaulted borrower.

EXIT INTERVIEWS

HEAL schools also must conduct an exit interview with each borrower as soon as the school is aware of the imminent departure of the student. The school must make the borrower aware of his or her rights and responsibilities under the HEAL program and the consequences of noncompliance with those responsibilities. The school also must obtain personal information from the borrower to aid the school or lender in skip-tracing if the borrower becomes lost. The school must provide the lender with a copy of the documentation of the meeting and the personal information within 30 days of the interview. If the borrower does not receive an exit interview, the information must be mailed to him or her within 30 days of the borrower's anticipated or actual departure date, whichever is sooner. When this information is sent to the borrower, the school must advise the borrower that he or she should forward any pertinent information to the lender. The school must notify the lender of the borrower's departure when the exit interview information is mailed to the borrower.

RECORDKEEPING REQUIREMENTS

In addition to conducting entrance and exit interviews, the institution must:

- Maintain an accurate, complete, and easily retrievable record with respect to each student. All of the following information must be included for each record and is required by regulation:

    —student's name, address, academic standing, and period of attendance;

    —name of the HEAL lender, amount of the loan, and the period for which the loan was intended;

    —documentation of the student's alien registration status, if not a U.S. citizen;

    —for the period in which the loan was made, the amount and source of other financial assistance received by the student;

    —date the school receives the HEAL check, draft, or EFT funds, and, if the school is not the lender, the date it either gives it to the student or returns it to the lender;

—if the school is the lender, the date the school disburses the loan to the student;

—if the school is a copayee, the date the school endorses the loan check or draft;

—for the academic period covered by the loan, the dates of payment and the amount of tuition, fees, and other charges paid by the student to the school;

—a photocopy of each HEAL check or draft received by the student;

—documentation of each entrance interview, including the date of such interview and the signature of the borrower indicating that the entrance interview was conducted;

—documentation of the exit interview, including the date of the exit interview and the signature of the borrower indicating that the exit interview was conducted, or documentation of the date that the school mailed exit materials to the borrower if the borrower failed to report for the exit interview;

—a photocopy made by the school of the borrower's I-151 or I-551, if the borrower is required to possess such identification by the United States, or other documentation, if obtained by the school, to verify citizenship status and Social Security number (for example, a certified copy of the borrower's birth certificate or a photocopy made by the school of the borrower's original Social Security card or copy issued by the federal government);

—documentation of the calculations made that compare the financial resources of the applicant with the cost of his or her education at the school;

—copy or copies of the borrower's financial aid transcript(s);

—the standard budget used for the student, and documentation to support the basis for any deviations made to the standard budget;

—copies of all correspondence between the school and the borrower or between the school and the lender or its assignee regarding the loan;

—a copy of each form used by the school in connection with the loan;

—expected postgraduate destination of the borrower.

- Retain the record for not less than five years following the date the student graduates, withdraws, or fails to enroll as a full-time student. The school may store the records in microform or computer format.

- Have an audit conducted at least once every two years.

- Notify the lender of a change in the borrower's status within 30 days following the change in status.

- Take responsibility for a borrower's default if the HHS Secretary finds that the school did not comply with HEAL regulations regarding that borrower.

- Notify the appropriate regional office of the Inspector General for investigation of any information that indicates potential or actual commission of fraud or other offenses involving these loan funds.

Reporting Requirements. The regulations also stipulate that HEAL institutions periodically file reports with HHS. The rules provide that:

- Reports must be submitted to the HHS Secretary at the times and in the manner that the Secretary may reasonably prescribe.

- A copy of each report must be retained by the school for not less than five years following the report's completion, unless otherwise directed by the Secretary.

- Reasonable and identifying information about HEAL borrowers, such as the borrower's name, address, and postgraduate destination, must be made available to the lender by the school.

Loan Repayment

INTEREST

Interest accrues on a HEAL from the time the promissory note is signed until the loan is paid in full. Unpaid accrued interest must be compounded semiannually and added to the principal. However, a lender may postpone the compounding of the interest before the beginning of the repayment period or during periods of deferment or forbearance and add interest to the principal at the time repayment of principal begins or resumes. Interest varies each quarter and may not exceed the rate of the 91-day U.S. Treasury Bill from the preceding quarter, plus 3 percent.

GRACE PERIOD

The nine-month period before repayment begins is popularly called the grace period. The grace period usually occurs after the month the borrower ceases to be a full-time student at a HEAL school. However, if, during the first grace period, the borrower becomes eligible for a postponement, the grace period starts over at the cessation of the period of postponement. Note again that interest is still accruing; only payments are postponed.

POSTPONEMENTS

Two types of postponements are available for HEAL borrowers: one is open to borrowers within an internship or residency program, the other to borrowers engaged in a fellowship training or educational activity. Installments of principal and interest need not be paid during periods of postponements; furthermore, the initial nine-month grace period starts over again at the completion of the postponement activity.

Postponement for internship or residency program. If, during the first grace period, the borrower becomes an intern or resident in an accredited program within nine full months after leaving school, then the borrower is entitled to a postponement. For a borrower who receives his or her first HEAL on or after October 22, 1985, this postponement of the beginning of the repayment period is limited to four years.

Postponement for fellowship training or educational activity. For any HEAL received on or after October 22, 1985, if the borrower becomes an intern or resident in an accredited program within nine full months after leaving school, and subsequently enters into a fellowship training program or educational activity within nine months after the completion of the accredited internship or residency program or prior to the completion of such a program, the borrower is entitled to a postponement. Postponement of the commencement of the repayment period for either activity is limited to two years.

The difference between a HEAL postponement and a HEAL deferment should be noted. In the case of a HEAL postponement, the borrower has never entered into repayment status. In the case of a HEAL deferment, the initial nine-month grace period has been exhausted and the student has entered repayment status.

DEFERMENTS

The repayment of principal and interest can be deferred, but interest will continue to accrue and compound during deferment. A borrower can receive a deferment if he or she is:

- studying full time at a higher education institution participating in the HEAL program or the Stafford Loan program;
- undergoing internship or residency training (up to four years);
- serving in the Armed Forces, Peace Corps, VISTA, or the National Health Service Corps (up to three years); or

- participating in an eligible fellowship training program or full-time educational activity (up to two years for loans made after October 22, 1985).

In addition, the lender must grant the borrower forbearance when the borrower is temporarily unable to make scheduled payments on a HEAL. The lending institution may assign, transfer, or sell the borrower's HEAL at any time.

The borrower is allowed at least 10 years, but not more than 25 years, to repay a HEAL. The time is calculated from the beginning of the repayment period. A borrower must fully repay a loan within 33 years after it is made. There is no prepayment penalty for accelerated repayment.

Endnote

During 1990, HHS proposed several changes to the HEAL regulations. The most significant notice of proposed rulemaking (NPRM) was issued in the *Federal Register* on October 1. This NPRM sought to establish performance standards based on default rates by which institutions, lenders, and loan holders would be measured. Under the proposals, a default rate of more than 5 percent would disqualify an institution from participation in the HEAL program. Lenders would be required to apply more stringent creditworthiness standards in determining an applicant's eligibility for a HEAL and would have to report a borrower's indebtedness to one or more credit bureaus within 30 days of the date a loan is made.

Earlier in the year, HHS published an NPRM that would revise procedures for handling HEAL bankruptcies. Under the proposal, issued in the March 29 *Federal Register*, insurance claims would no longer be paid on the basis of the filing by a HEAL borrower of a petition of bankruptcy under Chapter 7 of the Bankruptcy Act (claim procedures under Chapters 11 and 13 were not addressed). The NPRM also covered the calculation of time periods for filing bankruptcy claims and related documentation requirements.

In November, HHS proposed a new approach to the repayment of defaulted HEALs by practicing physicians. An NPRM issued by the Health Care Financing Administration of HHS would require defaulted doctors to agree to give up part of their Medicare payments until their student loans are paid off. Failure to cooperate would lead to a referral of the default to the Justice Department. The proposal also covered physicians who do not complete their obligations under the National Health Service Corps and Physician Shortage Area scholarship programs.

Chapter 6

Institutional Loan Programs

Institutional loan programs (ILPs), an increasingly important source of student aid financing, are generally designed to fund the "tuition gap" between federally guaranteed student loans and the cost of tuition for students ineligible for scholarships. Thus, ILPs usually cover either tuition in general or specific tuition payments, such as installment plans. Some institutions offer student loans only on a short-term, emergency basis, until other types of student aid are received.

The institution loans money directly to the student or his or her family. The borrower must pass a creditworthiness test and is often charged an application fee of between $10 and $100. The loan, which is usually uninsured, begins to accrue interest shortly after its disbursement. Interest rates are generally somewhat lower than those charged by the market; some schools offer variable interest rates that are adjusted as the school's cost of borrowing changes.

Each ILP establishes maximum and minimum loan amounts, the maximum that can be borrowed annually usually equalling the cost of tuition (net of other scholarships and awards). Minimum loans vary in size, but most fall within the $1,000 to $3,000 range. Most loans must be repaid within eight to 10 years after graduation or termination of enrollment. In some instances, only interest is repaid while the student is enrolled; in other cases, repayment of interest and principal starts immediately.

ILPs are normally funded from current revenue, endowment, or institutional borrowing. Some schools fund loan programs from the proceeds of the sale of tax-exempt bonds.

Establishing Terms of Loans

The institution should develop general policies for establishing loan funds in order to standardize terms and simplify administrative requirements. These policies should determine:

- if institutional funds are to be used for short-term emergency loans or for long-term loans;

- if short-term loans, due by a specific date, should have an "on demand" clause that requires repayment as soon as other financial aid or guaranteed student loan funds are received;

- if short-term loans should be unrestricted or used only for tuition or books and supplies;

- maximum amounts for each loan or for each student;

- if interest or service fees should be charged, and, if so, the amount;

- whether or not cosigners are required;

- eligibility requirements (for example, full-time or half-time enrollment);

- any provisions for grace periods, deferments, and cancellation benefits; and

- repayment terms, including quarterly or monthly schedule of payments, minimum amounts, and maximum repayment period.

Creating a New Program

The process for creating a new program should encompass:

- a market survey of potential borrowers that indicates the demand for an institutional program;

- development and analysis of alternatives to meet demand and coincide with institutional objectives;

- selection and implementation of those alternatives;

- analysis of feedback from potential borrowers; and

- identification of funds to support the program.

The process should be a participatory one that involves several administrative offices, including the financial aid, bursar's, loan collection, and business offices. The strategy of the loan program should match the institution's broader objectives and should not seek to compete with other institutions.

Once a university has determined that a demand for a loan program exists and is not being met, a task force of administrators should be formed and charged with investigating the problem and recommending a solution. The task force should survey prospective borrowers to determine what kind of loan program is needed. The survey should be conducted by means of a questionnaire and also, perhaps, a telephone campaign, and the results should be collected, tabulated, and analyzed.

If an institution cannot afford to start its own program, it should search for external alternatives, such as local lender programs and consortium loans. *Local lender programs* involve an agreement between the institution and a local lender, such as a bank located in the institution's geographic area, to provide loans to the institution's students. The terms of the loans—their amount, duration, repayment schedules, and whether they cover only tuition or other expenses—vary from one program to another. *Consortium loans* are funded, as their name suggests, by private consortia of institutions to provide supplemental loans to students attending member institutions. Again, the terms of the loans vary from one program to another. The institution's task force should assess all such alternatives, analyzing each in terms of its risks, costs, administration, and collection procedures, and should recommend the program that best suits the institution's needs.

Once a recommendation to establish a loan program is approved by the institution's administration, a plan should be drawn up for implementation. When developing a loan program, the institution should carefully evaluate federal and commercial requirements and practices regarding the design of programs and the collection of loans to minimize the potential for default. Information on implementing an institutional loan program can also be found in other institutions' financial aid offices, banks, and secondary markets.

Donor Agreements

Funds are often donated to a school for the express purpose of establishing a student loan fund. Before accepting donated funds, the institution should establish a policy governing the acceptance of such gifts. The school should ensure that it has the right to determine the amount and terms of loans and to amend the terms if necessary. (See Appendix A, ILP-1, for a sample donor agreement.)

Emergency Loan Funds

Most institutions provide short-term aid (generally, repayable in less than six months) through what are commonly known as emergency loan funds. The administration of these funds is likely to vary considerably, thus complicating the evaluation of management control of different programs. The following list, compiled from the results of a 1985 survey of members of the National Association of College and University Business Officers, itemizes the characteristics that a well-run fund should display:

- Comprehensive written policies and procedures concerning the emergency loan program are available to administrators and borrowers.

- Loans are made from institutional accounts by check only.

- Dollar limits are established on the amount to be loaned at any one time and on the total amount to be loaned.

- Specific uses for purposes of funds are identified.

- Prenumbered promissory notes are used for control, and are signed by all borrowers.

- Receipts are prepared for all payments; cash received is deposited daily.

- Collection activity is segregated from the disbursement/authorization process.

- Where program guidelines are permissive, written permission is obtained to withhold payment for emergency loans from aid funds accepted by a student.

- The internal auditor reviews the program at least annually.

- Records on outstanding loans are available to all offices extending credit to students.

- All emergency loans are administered through a single office.

Chapter 7

Administrative and Fiscal Standards

As a condition of participation in the Title IV programs, an institution must demonstrate that it is financially responsible and administratively capable of providing the education it promises and properly managing the student aid programs. Once certified, the institution must administer the Title IV funds in a prudent and responsible manner. Subpart B of the General Provisions regulations under 34 CFR 668 addresses the standards for participation in the ED student aid programs, including factors of financial responsibility.

Financial Responsibility

ED considers an institution financially responsible if it provides all the services listed in its official publications and statements, provides the administrative resources necessary to comply with the student financial aid program requirements, and meets all of its financial obligations, including making refunds to students in accordance with regulations and repaying any identified program liabilities. In making this determination, ED periodically reviews not only reports and documents provided by the school but also independent sources of financial information. An institution may be asked to provide ED with an income statement and balance sheet or an audit report accompanied by supporting documentation.

ED also requires an institution to maintain fidelity bond coverage on its employees. Although not defined in regulation, ED has previously recommended that an institution maintain a fidelity bond that equals at least one month's total cash flow at the institution.

Administrative Capability

Maintenance of the standards of administrative capability for delivery of student aid awards is primarily the responsibility of an institution's student financial aid administrator. Beyond performance of the general student aid administrative function, however, additional factors of administrative capability may be taken into account when administrative capability is addressed. These factors include an institution's student loan default and withdrawal rates. In recent years, both ED and HHS have implemented performance standards based on default rates in specific student loan programs that establish additional criteria for continued program participation.

Fiduciary Responsibility

The funds that an institution receives under the federal student aid programs are intended solely for the use of the student beneficiaries and the authorized student aid program administrative cost allowance (ACA) permitted by federal regulations. Funds are considered to be held in trust by the institution for students or the agency of origin.

The institution must administer and account for student financial aid funds with the highest standards of due diligence. Institutions participating in the Perkins Loan, NSL, and HPSL programs are required to invest any excess cash from each loan fund in an appropriate account. All earnings on such investments must be deposited into the appropriate revolving fund.

Other Federal Program Requirements

In addition to the administrative requirements that focus on the awarding, disbursement, and collection of student aid funds by the institution, several new laws pose administrative requirements for the Title IV student aid programs. The Higher Education Amendments of 1986 require a school to certify to ED that it operates a drug-abuse prevention program that is accessible to students, employees, and officers of the institution. Since then, two additional laws, the Drug-Free Workplace Act of 1988 (P.L. 100-690) and the Drug-Free Schools and Communities Act of 1989 (P.L. 101-226), have been enacted that likewise require special certifications to the federal government.

Before it may receive campus-based funds, an institution is also required to certify that neither it nor its employees have been debarred or suspended by any federal agency. Debarment or suspension action can render an institution ineligible for participation in any of the Title IV student aid programs. The debarment and suspension regulations became effective in 1988.

Beginning during the 1990-91 award year, if an institution has received an allocation greater than $100,000 from its campus-based programs, it must certify each year that it will not use federal funds to pay a person for lobbying activities in connection with federal grants or cooperative agreements.

The Blue Book

Requirements for accounting, recordkeeping, and reporting for the Title IV student aid programs administered by ED are discussed in detail in *The Blue Book: Accounting, Recordkeeping, and Reporting by Postsecondary Educational*

Institutions for Federally Funded Student Financial Aid Programs, commonly referred to simply as *The Blue Book*. The primary purpose of the book is to provide guidance to institutional personnel who handle the fiscal functions for the Title IV student aid programs. It also offers useful program information for other institutional managers and personnel involved in student aid administration. The current edition of *The Blue Book* was published by ED in December 1988; a revised edition is planned for publication in 1991.

The Blue Book is the principal source of information on required record maintenance, retention, and management procedures and gives in-depth coverage of recommended accounting procedures for each of the Title IV programs. The book also addresses the processes and requirements for institutions as they seek to obtain, manage, and return federal funds, and details the myriad of reporting requirements associated with each of the ED student aid programs.

In 1989, The National Association of College and University Business Officers published the *Supplemental Guide to the Department of Education's Blue Book*. This publication provides a complete set of books (journals and ledgers) for one entire award year and is similar to an accounting "practice set" of financial books and reports. The journals and ledgers include sample entries used to record federally funded student aid program activities.

Institutional personnel engaged in any facet of the management or administration of student loan programs should be familiar with *The Blue Book*. Although individual employees in the student aid office or loan collection area may not be directly responsible for the maintenance of student aid accounting records or financial reports, all institutional personnel involved in the student aid delivery system serve as sources of institutional student aid information and data. These data are eventually incorporated into the school's financial aid accounting records that are used to meet reporting requirements of the school and the federal government.

There is no comparable reference manual for the student loan programs administered by the Department of Health and Human Services (HHS). However, much of the general information regarding accounting procedures for the revolving student loan funds covered in *The Blue Book* would be helpful to personnel engaged in managing and administering the HHS student loan programs.

Internal Control for Title IV Programs

Business officers are responsible for establishing, documenting, and maintaining systems of institutional internal control, including federal student financial aid programs. A sound and effective system of internal controls is vital if an institution is to meet its financial and fiduciary responsibilities with the federal government. Internal control systems are also routinely included in the scope of review by independent auditors.

In order to participate in the Title IV student financial aid programs, an institution must be able to demonstrate that its system of internal control possesses adequate checks and balances. ED regulations require that institutions separate the authorization of awards from payments and the actual disbursement of funds for Title IV programs. On most campuses, personnel in the financial aid office are responsible for authorizing disbursement of awards while the business office is responsible for disbursing the aid to students. ED expects institutions to take a trial balance and reconcile cash accounts (that is, reconcile book and bank balances) at least once a month and requires that the reconciliation of the cash accounts is not performed by the same person who undertakes the cash receipt or disbursement function. ED also requires that institutions reconcile federal funds (that is, reconcile bank and federally reported balances for cash).

Chapter 8

Collection

Delinquent Accounts

Most student loans become delinquent because debtors are careless, indifferent, or inefficient in handling their debts. Usually, a reminder will correct the situation. The 15-day, past-due notice required by the Perkins Loan program serves this purpose. However, if a debtor uses the "overlooked" excuse two or more times, he or she should be telephoned or sent a courteous but firm letter explaining the importance of prompt payments. If a negligent debtor is allowed to continue making late payments, his or her account will become chronically slow.

A revision of the repayment schedule is sometimes a successful means of effecting collections. A borrower may be encountering temporary financial difficulties, which may be offset by decreasing current payments; payments can be increased again at a later date in accordance with the borrower's financial ability. When current payments are decreased, the borrower remains responsible for paying the accrued interest.

Once an account becomes past due, the institution should consider withholding (to the extent permitted by law) all further services such as transcripts, letters of recommendation, alumni materials, publications, and placement information until the account has been brought current or until satisfactory repayment arrangements have been determined. An institution may wish to release a transcript to a prospective employer, however, since without a job a borrower may have difficulty bringing the account current. Institutional legal counsel should be consulted prior to taking such actions.

Each federal student loan program has due diligence requirements that specify the intervals between past-due billings. When a 15-day, past-due contact is required, the next notice typically is sent out 45 days after a payment is due. This notice may be in the form of a past-due statement with a message, or it could be a letter or telephone call. Regardless of the means of contact, the borrower must be made aware that the institution intends to pursue collection in a thorough, businesslike manner.

If an account becomes 60 days past due, the institution should send a final demand letter, which informs the borrower that the loan will be referred to the institution's collection department or to a collection agency, or litigation proceedings will be implemented, if appropriate payment or information is not received within 30 days of the date on the letter. If there is an endorser of the loan, he or she should be made aware that the account is past due at that time.

If an institution chooses to accelerate a loan, it must notify the borrower in advance of that action. When a loan is "accelerated" the entire unpaid indebtedness, including accrued interest and any penalty or late charges, becomes immediately due and payable. If an institution accelerates or intends to accelerate a loan, it must state that intent in writing at least 30 days before the effective date of acceleration. The written notice may be issued either independently or in any demands for payment required by regulations. If the borrower does not respond to the final demand within 30 days from the date the letter was sent, the institution must attempt to contact the borrower by telephone before beginning collection procedures.

Institutional versus Commercial Collection

An institution must carefully determine whether and when to use its own personnel to conduct collection efforts or to hire an outside collection firm to handle some or all of its delinquent student loan accounts; certain federal regulations require the use of external agents at certain junctures in the collection cycle. Some possible advantages and disadvantages of these two approaches are shown in Table 8-1.

Table 8-1
Institutional versus Commercial Collection Firms

Internal Collection	External Collection
Advantages	
Familiarity with borrower	Third-party effect
Knowledge of loan programs	Referral to borrower's locale
Willingness to work with borrower	Cost contingent on amount collected
Size of debt no object	Experience in dealing with hard-core debtors
	Affiliated firms give broad coverage
	Know when legal action is advisable
	Attorneys available in other states
	Can locate debtor's asset information
	Can more easily skip-trace debtor
Disadvantages	
Inexperienced in dealing with hard-core debtors	Sometimes unfamiliar with loan provisions
Out of borrower's locale	Not always willing to work with borrower to reach a compromise
Cost	Some accounts too small
Space required	Institution must learn firm's operations
Inability to locate debtor's assets	Possible unethical or illegal practices
Skip-tracing more difficult	

An institution must have faith in its ability to collect loans to be successful. Because the cost of collecting an account is not always as important to most institutions as success in collection (the need to keep default rates within acceptable limits), an institution often pursues a small account more tenaciously than would an outside collection firm. For example, if a firm is working for a 30 percent commission, it cannot afford to spend more than $30 in collecting a $100 account. To the college or university, collecting the account may be more important than the expense it incurs in doing so.

An institution that chooses to use a collection firm generally does so because it calculates that it cannot itself collect its loans at a reasonable cost. The costs of collection should be computed and charged to the borrower as required by the specific student loan program. When the cost of space, equipment, long-distance telephone calls, salaries, fringe benefits, and other items involved in attempting to collect are taken into account, the overall cost of institutional collection is often greater than the standard one-third contingent fee charged by outside collection firms. The fact that costs cover all collections attempted, whether successful or not, should also be taken into consideration.

Many institutions compromise by using both methods. For example, after the final demand letter, an attempt often is made to collect the amount in-house. If there is no success after a reasonable period (approximately 90 days), the account is referred to an outside firm.

As indicated in Chapter 1, ED proposed changes to the regulations to reduce the limits on the amount of fund assets that the institution can spend on external collection costs. (See *Federal Register*, November 13, 1990.) Loan collection managers should take these proposed changes (and, of course, the final regulations when they become effective) into account in their assessment of collection costs.

External Collection

The capability of a firm to collect a high percentage of accounts usually depends on how much collection work the institution has performed on the accounts before referring them. The same collection agency might recover 35 percent of the accounts for one institution and only 20 percent for another and be working equally hard at both jobs. One way an institution can gauge the effectiveness of collection firms is to use more than one and compare their performances. The institution should not hesitate to let a firm know how it compares with its competition. It is important to remember that when an institution contracts with a collection firm (whether required by regulations or not), the school remains responsible for compliance with the due diligence requirements, including the safeguarding of funds collected. (Chapter 9 describes the process of contracting for services in greater depth.)

TYPES OF COLLECTION FIRMS

Percentage-commission collection agencies. Most collection agencies charge a percentage of money collected. For example, if the institution has agreed to pay 33 percent commission, and the agency collects $100 of $500 referred, the agency is entitled to $33; the fee is contingent on collection. Most collection agencies have arrangements with attorneys around the country who may be used (with the institution's approval) if litigation should be necessary. Usually the fee will increase for litigation.

Because competition among collection agencies is strong, institutions should be able to contract with a firm for a fee of approximately 33 percent on first-placement accounts. Some agencies accept second placements (second attempts to collect through an agency) and litigate accounts without raising the fee; however, standard practice is to charge a 50 percent fee for second placement and litigation accounts.

Flat-fee collection agencies. Some collection agencies charge a flat fee for collection. Usually, a contract with such an agency calls for an up-front payment, which guarantees a certain recovery. For example, an agreement might have the agency collect three times the amount of the fee; in another contract, the guarantee might require collection of a certain number of accounts before an additional fee is levied.

Another type of flat-fee agency is one that charges the institution a fee once the account is collected in full. In a typical agreement with this type of agency, the fee is set before collection work begins, and if the agency collects only a portion of the amount due, it is not entitled to its fee.

Flat-fee agencies often have borrowers respond directly to the institution. Usually, this causes increased work for the institution, but the fee is lower than that of a commission agency. Some flat-fee agencies provide legal help, but most do not.

Law firms. Law firms that specialize in the collection of delinquent student loan accounts employ, in addition to lawyers, collection personnel who can skip-trace and locate borrowers' assets. The number of law firms engaged in collections for colleges and universities is small but growing.

The methods used by law firms in their attempts to get borrowers to pay without recourse to litigation are similar to those employed by collection agencies. However, if litigation is necessary, a law firm usually litigates an account at an earlier date than would a collection agency. Many law firms do not increase their fees when they sue.

Most law firm fees are contingent on collection and usually do not exceed fees charged by a collection agency. Some law firms will contest the dischargeability of a debtor in bankruptcy if the institution wishes them to do so. Fees for this type of work are usually at an hourly rate to be agreed on between the institution and the law firm.

WORKING WITH COLLECTION FIRMS

An institution must determine which and how many accounts it will send to an external firm. The institution may start by sending a "test" group of accounts to a collection firm in order to learn how accounts should be submitted and if that firm is likely to be successful in its collection efforts. If an institution uses more than one firm, similar accounts must be sent to each in order to compare them effectively. A true comparison cannot be made if, for example, only local accounts go to one collector and out-of-state accounts go to another.

Most firms require only basic information (such as borrower's name, address, loan number, and amount) to begin a collection procedure, but the more information submitted, the greater the probability of success without involving the institution's time. The institution should decide whether the firm should collect only the amount currently due or accelerate the loan and request the total outstanding balance.

All collectors are required to provide the debtor with a written notice indicating the amount of the debt, the name of the creditor, and the name of the original creditor if different from the creditor that is currently owed. If not disputed in writing within 30 days, the debt collector can assume that the debt is valid; if disputed in writing, the debt collector must obtain and forward a copy of the debt verification to the lender.

Institutions should continually review the cost and performance of the external firms that they are using. If collection percentages drop, if checks are not submitted to the institution on a regular basis, or if accounts are held without action being taken, the institution should consider terminating the services of that firm and using another. It is important to remember that the firm is working for the institution, and not vice versa. If a college or university wishes to recall accounts from a firm, that option should be clearly indicated in the contract.

Collection firm and institutional reports are effective means of gauging an external firm's effectiveness. An outside collection firm should be required to send an acknowledgment report that lists all the accounts submitted by the institution and their dollar amounts. The external firm also should send a monthly remittance report that lists all accounts on which collections have been made. The report should display the date of collection, borrower's name and account number, amount collected, amount of commission, and amount due. This report should be monitored by the institution to ensure that the commission agrees with the contract. A status/inventory report should also be sent so the institution can check action on individual accounts and make sure that records of the agency and the institution agree. Finally, the agency should send a "close and return" report, on which the collection firm indicates reasons that can be used by the institution for requesting write-off or assigning a loan to the federal government.

An institution should require each of these reports from all outside collection firms. Though formats may vary, the same information should be provided.

Components of a Successful Collection Program

If an institution plans to perform its own collections, it should wait no longer than 30 days after sending the borrower the final demand letter before taking further action. Files on the borrower who gave no response should be gathered together and transferred with the account to a "collections" department.

SELECTING PERSONNEL

Careful consideration must be given to the type of person(s) hired by the institution to collect student loans. An institution's loan collection staff should be very persistent, able to tolerate verbal abuse, slow to anger, and enjoy succeeding at a seemingly impossible task. Individuals must be fully knowledgeable about the rights and obligations of borrowers and the responsibilities of the institution under each type of loan program. They should be compassionate, but also aware when a debtor is attempting to undermine the process. Above all, collectors must remember that their success or failure hinges on their ability to collect.

By the time student loans come due, some borrowers are hard-pressed and overextended, and are reluctant debtors. They may sort through their bills, deciding which will be paid first and which must wait. The task of the institution's collection department is to press hard enough for payment so that the debtor will not gamble on the consequences of ignoring the student loan. This often can be accomplished by letter or by telephone.

When an account is referred for collection, it is best for the institution to send at least two letters before using the telephone. These letters can be standard form letters sent to all delinquent borrowers. Correspondence is by far the most popular method of collecting overdue accounts; experience has shown that a skillfully written letter is usually the most effective and least expensive collection method possible. Many accounts may be brought up to date in this way and returned to the billing department without time-consuming effort on the part of a collector.

TELEPHONE CONTACTS

To be effective, collection management must be flexible, and a collector should use collection channels that are best suited to a specific debtor. Sometimes the best method is the telephone, which has several advantages over a letter.

- *It demands attention.* A debtor who can ignore a letter seldom can resist answering the telephone, even if he or she suspects the nature of the call.

- *It demands an immediate response.* The debtor must give an excuse or offer an explanation for missing payments. Thus, even if the call fails to bring in any money, it provides a firm starting point for the next collection effort.

- *It saves time.* In a few minutes, the collector may discover problems and smooth over difficulties that could take weeks of correspondence to resolve.

- *It displays the institution's determination to collect.* The fact that the institution has taken the trouble to make a call, especially a long-distance call, impresses the debtor with the importance attached to the delinquency.

Telephone collections require advance planning. The account should be assigned to a specific collector so that if more than one call is required it will be made by the same person. The collector should have a good voice and a strong personality, and be tactful but firm. Adhering to the general rules that follow can help the collector avoid errors and cope with situations that tend to recur.

1. *Assemble information ahead of time.* Before making a telephone call, a collector should gather all available information on the delinquent account for reference during the conversation. This information should include data on previous delinquencies (exact dates and amounts) and any response the debtor may have made.

2. *Check identity of the party reached.* The collector must make sure that he or she is speaking with the correct person. Identification by last name only is not enough. Beginning a collection appeal to the wrong person may make it impossible to ever contact the debtor.

3. *Use titles.* The collector should use such titles as Mr., Mrs., Dr., and Judge when conversing with debtors. Use of a title underscores the seriousness of the matter at hand, discourages intimacy, and subtly flatters.

4. *Get and maintain the person's complete attention.* The collector should give the borrower a chance to reply with something other than yes or no to be sure he or she is paying attention.

5. *Assume the response desired.* Whether or not the call is successful depends largely on how the collector words the questions. Questions and demands should be phrased positively so that it is easier for the other person to go along with them—to act as the collector wishes—than to resist them. The debtor should have as little room to maneuver as possible. For example, the collector should not say "Will you put a check in the mail on Tuesday?" but "I will mark my records and expect your check on Wednesday." The collector should not say "Would you give me your employer's name, please?" but "Who is your employer?"

6. *Stay in control of the situation and avoid arguments.* The collector must establish the purpose of the call, set its tone, and control the conversation. The collector must not become defensive with the debtor and, above all, should avoid being drawn into argument.

7. *Elicit specific promises and follow up on them.* Obviously, money cannot be collected over the telephone. An oral commitment from the debtor to pay is the best that a collector can achieve; this commitment must be as specific as possible. If the debtor says "Okay, I'll get it to you in a few days," chances are the promise will be forgotten the moment the telephone is hung up. The collector should name a specific date and insist on a specific promise, record the promise and date, and if the debtor fails to pay as promised, call again immediately. Failure to contact a borrower after a promise has been broken often leads to future broken promises.

A useful tool for a collector to have during a telephone call is a "loan collection guide." This guide should be designed so that the typical borrower's claims, promises, or statements can be seen easily; when the debtor uses the claim, promise, or statement, the collector can quickly turn to that page for responses. For example, if the borrower claims that payment was made, possible responses that could be listed under that statement in the guide are "How was payment made?" "When was payment made?" or "How much was paid?" The guide can be expanded to meet changing situations.

Inevitably, some collection efforts fail. With each failure, the institution must choose between using a collection agency and litigation. If an account is uncollectible and the institution seeks to write off or assign the loan to the federal government, it is generally necessary to show that due diligence was performed. The collector should keep accurate records of all telephone calls, correspondence, and personal contacts. It is also necessary to document the amount collected through in-house collections.

ADDRESS SEARCHES

Collecting student loans can be challenging even when the debtor's address is known. When the debtor's location is not known, the job becomes infinitely more difficult. Continued mailings to the same address after it becomes evident that the borrower (or endorser) no longer resides there do not constitute due diligence.

Regardless of precautions taken and information obtained while a borrower is in school, some borrowers skip payment. A debtor is classified as a "skip" when he or she cannot be located at the known address. Locating a skip can be complex and expensive, involving much ingenuity, imagination, and—above all—time. Because of this, the institution should consider carefully whether it is willing to do its own skip-tracing. It is a mistake to commit time and resources to skip-tracing at the expense of working current or past-due accounts with known addresses. An institution may wish to hire a commercial firm for this job.

Skips can be divided into two general classes. Some borrowers intentionally try to cheat the institution. They take great pains to cover their tracks, reacting to inquiries with lies, trickery, or evasion. In such cases, the skip-tracer is forced to disguise tracing efforts.

The other class of skips, and by far the largest, is composed of those debtors who do not intentionally avoid their obligations, but who, when moving, forget to leave forwarding addresses. If these borrowers hear nothing more from creditors, they become more and more forgetful and their debts seem less and less obligatory. When tracing them, it is best for a tracer to be straightforward, telling the references contacted, such as relatives, former employers, or neighbors, exactly what is desired. Skip-tracing should always begin with the premise that the skip is unintentional. Whether or not a skip seems to be intentional, an institution should always proceed with discretion. It is easy to involve the institution in a lawsuit by the use of unethical or unlawful means to contact or locate a debtor.

The most obvious place to begin searching for information about a debtor's location is in institutional files (Perkins Loan program regulations *require* that a school review records in all institutional offices). If a student completed a personal and confidential information form each time he or she applied for a loan, the file should contain several sources of information. In addition, there are financial aid, registrar, business office, and alumni records.

Success in skip-tracing is contingent on information obtained. Data considered important in locating "lost" borrowers include parents' names and addresses, parents' employment, other relatives' addresses, spouse's employment, and borrower's employment. The institution also should try to find the borrower's telephone number through checks of directories or with information operators in the city or town of the borrower's last known address. The institution should use available federal skip-tracing services in some cases (and must use them in order to meet certain loan program requirements). The more information gathered, the greater the probability of success in location.

When the borrower is located, he or she must be contacted. The best method of collecting a debt is to telephone to make arrangements for settlement. In most cases, the debtor will cooperate. If contact cannot be made by telephone, a letter can be used.

HARASSMENT AND LIBEL

When utilizing either the telephone or correspondence, care should be taken to prevent harassment charges being brought against a school. For example, in some states, harassment is defined as:

- communicating with the debtor more than three times a week or more than once a week at his or her place of work;
- communicating with the debtor between 9:00 p.m. and 7:30 a.m.;
- publishing a "bad debt list";
- sending forms to the debtor that simulate judicial practice;
- engaging in the practice of law;
- making false representations, such as using an unauthorized name;
- using unclear or illegible type in notices to the debtor; and
- threatening the debtor with impairment of credit rating.

Local and state laws should be checked and the school's attorney should be consulted.

Libel per se. To charge another with fraud or dishonesty is libelous if one knowingly makes false representations with intent to deceive. Officers of institutions should always state the truth as they know it.

Postal laws. In addition to incurring liability for libel, the mailing of postal cards or letters on the outside cover of which appears matter tending to reflect on the character of the addressee may violate postal laws. Such matter is declared to be nonmailable.

Computerized Collection Systems

Most institutions today use computerized billing systems and many employ collection management systems or similar software packages to administer the collection of past-due accounts. Such systems usually increase the efficiency and accuracy of collection operations, thereby saving an institution time and money and improving its collection rate.

The following brief discussion presents a five-step process leading to an institution's adoption and implementation of a computerized system. Many elements of the discussion apply not only to schools that presently use manual collection systems but also to schools considering switching from one computerized system to another.

As a first step, an institution must evaluate its current methods of loan collection by measuring productivity. This evaluation should extend beyond mere analysis of present collection rates and include an assessment of the amount of staff time and money that current methods require. Second, the institution's student loan office should establish open lines of communication with all related departments, determining the key personnel in each department and developing healthy working relationships with those staff. The departments in question will inevitably vary somewhat from school to school, but all of the following are likely to hold information necessary to the efficient collection of loans:

- registration,
- records/transcripts,
- financial aid,
- administration,
- payroll/personnel,
- bursar/business office,
- alumni affairs,
- accounting services, and
- computer center.

Third, the institution should determine its needs in terms of funding, staff, support staff, equipment, and supplies. The fourth, and most difficult, step involves analyzing a prospective computerized system to assess its potential value to the institution. Among the issues to be considered are:

- Is the system user-friendly?—is it easy to learn and operate?
- Is the system written from the perspective of the user?—does it make sense to the user?
- Does the system satisfy both short- and long-term requirements?
- Does the system address all the various elements of the collection process?

- Is the system cost-effective?

- Is the system a better tool than the system the institution currently uses?

The fifth and final step is implementation. Implementation almost invariably generates technical problems, which, if compounded by internal political difficulties, can make the process initially tortuous and apparently unproductive. However, such problems can be kept to a minimum if the institution first debugs the new software and carefully examines the output for operational and procedural errors.

Implementation also necessarily involves conversion of existing data, staff training and reorganization, and the development of new forms and processes.

The advantages and applications of computerized systems are many. Software is available or may be designed to fulfill any or all of the following tasks:

- documentation of exit interviews;
- creation and updating of repayment schedules;
- maintenance of files and on-line payment posting;
- billing;
- correspondence with borrowers;
- documentation of telephone contacts;
- creation of reports covering enrollment status, past-due accounts, and so forth;
- electronic FISAP reporting;
- skip tracing; and
- production of credit reports, transcripts, and enrollment information.

A number of commercial firms offer a variety of services, particularly in regard to billing. Each institution should assess the cost-effectiveness of contracting out the billing of some or all of its student loan borrowers in light of the costs of in-house programming and systems maintenance.

Chapter 9

Contracting for Services

Loan officers and their institutions will often contract with billing services, collection firms, credit bureaus, and skip-tracing firms in the conduct of the loan collection process. This chapter focuses on the selection process and regulatory requirements for billing services and collection firms. Institutions should be aware that placing a loan account with an external agent does not absolve an institution of its obligation to follow federal regulations that apply to that loan. At no time does an institution relinquish its responsibility for compliance with federal rules when it employs external agents to assist it in performing any of the due diligence requirements.

(It may be noted that, unlike the Department of Education, the Department of Health and Human Services does not address the specific issues discussed in this chapter. However, all institutions are advised to follow the practices described below as part of prudent financial management of student loan funds.)

The Selection Process

PREPARATION OF A NEEDS STATEMENT

Prior to contacting any external agencies, the appropriate personnel at the institution should meet to discuss their expectations. This process can be greatly facilitated by the preparation of a needs statement that identifies the specific services that the institution wishes to purchase. This step, though it seems obvious, is often overlooked. Armed with the needs statement, the institution can decide what actions an outside agency would be asked to complete, how long accounts would be serviced, at what level of delinquency past-due accounts would be turned over for collection, and so on. Firms that do not meet the criteria set out in the needs statement can be readily eliminated from any search for billing and collection agencies.

INTERVIEWS OF COMPANY REPRESENTATIVES

Once the needs statement is completed, companies should be surveyed. In a search for billing services and collection firms, a good starting place is student loan seminars and workshops at which local and national firms are usually represented. Peers and colleagues at other institutions should also be contacted and interviewed informally to evaluate the types and quality of service obtained from commercial agencies. Once a few companies have been selected, interviews may begin.

Prior to conducting interviews with billing services or collection firms, an institution should prepare a list of questions to ask commercial candidates. The list, which will help the institution make a decision based on facts rather than on the amicability of a sales representative or the impact of glossy company materials, should include such questions as:

- Who owns the company?
- Where is the company located? Is it possible to visit the company's offices?
- What is the size of the company's operation compared to the number of its clients and the volume of their accounts?
- What procedures does the company use?
- How experienced are the company's personnel, and how familiar are they with federal regulations?
- What fees does the company charge and how are they calculated?
- Are court fees paid in advance by the firm or the institution?
- How will bankruptcy claims be handled?
- How long will the firm maintain closed files?
- What references can the company supply? (Any references should be checked to ascertain if other schools are satisfied with the work of the company.)

The list should be revised as necessary to add new questions and concerns.

An alternative approach is for the institution to prepare a request for proposal (RFP) or a request for quotation (RFQ) detailing its requirements—this option is recommended especially to institutions that have experienced difficulty in working with external firms. Responses to these RFPs or RFQs should help an institution narrow the field of prospective firms significantly.

SELECTION OF A COMPANY

Most billing and collection firms provide their services to a number of educational institutions and specialize in the collection of student loans. In these firms, service is usually standardized to comply with regulations. In some cases, customized requests can be accommodated. The firm that best satisfies an institution's needs statement should be selected.

Many new companies frequently enter the student loan market, especially in the field of loan collection. Such companies may be perfectly competent, but their lack of experience demands that the institution scrutinize their abilities and expertise closely. The institution should carefully examine the company's knowledge of the regulations that apply to the service it would be providing. In addition, the institution should ascertain if the collection style of any firm new to student loans is consistent with the manner in which the school would represent itself if it were handling the collection.

Billing and Collection Service Regulations

ED regulations governing the Perkins Loan program require that billing and collection services:

- not be owned by the same company—in other words, an institution cannot use a collection firm that is owned or controlled by the billing service it uses, or is owned by the same corporation, partnership, association, or individual that owns or controls the billing service;
- provide a quarterly statement that details activities regarding each borrower, changes in borrower demographic information, amounts collected from the borrower, and charges for skip-tracing activities and telephone calls;
- not deduct their fees from the collections received from a borrower (billing services only);
- instruct the borrower to pay the institution directly, send payments to a "Lock Box" maintained for the school, or deposit funds received from borrower in an institutional trust account; and
- maintain a fidelity bond or comparable insurance.

If the institution does not authorize a collection firm to deduct its fees from payments from borrowers, the institution must ensure that the firm is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the service.

If the institution authorizes a collection firm to deduct its fees from borrowers' payments, the institution must ensure that, if the amount of funds that the institution expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of:

- 10 times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the firm; or

- the total amount of funds that the firm demonstrates will be repaid over a two-month period on all accounts of any kind it services.

If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to a firm is more than $100,000, the institution must ensure that the party has, and maintains in effect, a fidelity bond or comparable insurance that names the institution as beneficiary and is not less than the amount of funds reasonably expected to be repaid on an account referred by the institution to the firm during a two-month period.

The Contract

Once a billing or collection firm has been selected and all requirements have been met, particulars should be added to the contract. Most firms have standard contract forms. The contract should be reviewed by the institution's legal counsel (and amended where appropriate) before it is signed.

Even after the contract is executed, the institution retains its responsibility for ensuring compliance with all billing and collection requirements mandated by federal regulations. It is very important that the third party be monitored frequently and periodically by the institution to ensure compliance.

Termination

Most contracts with billing and collection firms specify that termination can be accomplished by written notification within a specified time period, usually 30 or 60 days.

All too often, institutions continue relationships with third parties who do not provide adequate services. If an institution is dissatisfied with a firm, that dissatisfaction should be made known to the proper representative of the firm immediately as well as to the institutional managers. If the service does not improve, the present relationship should be terminated. The institution should examine the area in which it has encountered problems and determine if an alternative provider should be sought or if the institution should conduct the activity in-house.

Chapter 10

Litigation and Bankruptcy

When a postsecondary institution has exhausted internal and external collection activities on a student loan without result, no alternative may remain except to file suit against the borrower. Although the decision to take legal action rests with the school's loan manager, the process itself removes the day-to-day control of the account from the collector to an attorney. The collector or collection department will probably be responsible for preparing the documentation upon which an attorney will file suit and may have cause to contact the attorney during the litigation and postlitigation collection process. An understanding of the steps commonly taken in a suit for collection is essential for the loan collector.

Citations from the *Federal Rules of Civil Procedure* (FRCP) are meant to be used only for reference. *Readers must remember that legal procedures are governed by state law and local rules of court and custom; they are not identical to those outlined here. This chapter does not attempt to offer legal advice, but to provide a general understanding of the legal process.*

Municipal Courts

Lawsuits are initiated by the plaintiff's attorney by filing a complaint with the appropriate court. Generally, a municipal court has jurisdiction over cases in which the amount to be recovered does not exceed $10,000; cases in which the claimed amount exceeds $10,000 should be filed in a court of common pleas. The institution or the defendant's residence or principal place of business must be within the court's jurisdiction. For student loan collection purposes, the plaintiff is the institution that holds the promissory note of the defaulted loan. The defaulted borrower is the defendant.

THE COMPLAINT PACKAGE

The plaintiff files a complaint against the defaulted borrower in a "*Plaintiff University* v. *Defendant Debtor*" format. The complaint, which must provide the addresses of the parties, is accompanied by a copy of each promissory note upon which the action is based. The complaint states the claim upon which the suit is based: the amount borrowed by the debtor; the amount repaid or canceled, if any; the balance remaining, including interest and appropriate late, penalty, and collection charges; and the borrower's refusal to pay the balance of the loan. If there are multiple loans, there may be multiple counts for which the plaintiff seeks relief within the complaint. The final paragraph of the complaint, known as the prayer, asks the court to grant the judgment in favor of the plaintiff and provide the requested relief, including costs. Costs generally are awarded to the victorious party (FRCP 54(d)).

An affidavit of indebtedness also may be submitted by the plaintiff at the time the account is referred for litigation. The affidavit is a signed, sworn statement by an individual representing the plaintiff that states the original amount of the loan, the amount of interest and appropriate late, penalty, and collection charges that have accrued, and the outstanding balance. The affidavit may be used as part of the complaint package or as part of a motion package to be filed with the court at a later date.

Each court is served by a clerk of courts who maintains the court's records. This clerk also has the authority to certify records as correct, accept and process a party's pleading, and journalize the court's judgments. A judgment does not take full legal validity and effect until it is journalized by the clerk of courts (FRCP 3). The clerk of court's office maintains the documents received from the parties pertaining to the suit and posts a record or docket of the activities, including the date the complaint was filed, the date the answer or other pleading was filed, and the final disposition of the case.

The clerk of courts processes the complaint and the service of summons, both of which are served on the defendant (FRCP 4). The service of summons informs the defendant that he or she has been named as the defendant in a lawsuit, of the names and addresses of the parties and the court, and the length of time the defendant has to answer the complaint.

Upon receipt of a service of summons, the defendant has a certain amount of time in which to respond to the plaintiff's complaint and file a copy of the response with the court. The defendant's response may be an answer to the complaint or a motion requesting additional time to file an answer. At this stage in the proceedings, the defendant does not need to present a defense; a simple denial of allegations made in the complaint is a sufficient answer. The defendant does not need to admit guilt to any count, but any count in the complaint not specifically denied is deemed admitted by the defendant.

The plaintiff is responsible for proving the allegations made in the complaint.

DEFENSES

The loan collector can better plan his or her strategy and time the litigation of an account if he or she can anticipate the defenses the defaulted borrower might raise (although it is rare for an accused defaulter to offer any defense at all). Although almost any excuse for nonpayment can be offered as a defense, the loan collector should become familiar with a few of the more commonly offered defenses.

Statutes of limitations. The statute of limitations is the time limit imposed by each state during which a claim can be enforced through a court in that state (see Appendix C for details of individual states). When a statute of limitations has expired, the plaintiff no longer has the right to enforce its claim in a court of law.

The statute of limitations (frequently referred to as limitation of actions) is an "affirmative defense"; the defendant must plead the statute of limitations to be protected by the statute. If the defendant fails to do so, he or she will not be protected by the statute and the plaintiff will be allowed to take judgment against the defendant. In certain cases, the plaintiff has been assessed a fee for instituting litigation after the state statute of limitations has expired.

Litigation should proceed in a timely, reasonable fashion. The statute of limitations compels the lending institution to exercise its rights within a reasonable period of time.

Minority of age. The defense of minority of age is based upon the defendant's claim that he or she was a minor when the promissory note was signed. In most states the age of majority is 18 years, the age of most college freshmen. Because minors cannot engage in legally binding contracts in most states, such a contract would be voidable. (Institutions should check state statutes to determine if this applies.) Most promissory notes, however, allow for a parent or guardian to comake or endorse a loan, thereby ratifying the note and complying with state law.

The complete denial. A complete denial to each and every allegation in the complaint is a sufficient answer to the plaintiff's complaint. The defendant is not required fully to plead his or her defense in the answer itself; the defendant's simple denial is adequate. The denial usually is accompanied by a request for a jury trial or a motion to dismiss the case in favor of the defendant. The defendant's strategy is to insist that he or she is an innocent party. Defaulted borrowers who take this course of action are probably trying to determine if the plaintiff is ready to go to the expense of a trial (especially if the loan is small) or to settle the account for less than full payment (perhaps payment of principal only or a percentage of the full amount owed).

Many cases are settled, either by payment in full or partial payment, after this type of complaint-denial scenario. The defendant's primary advantage in settling the case is to have the suit dismissed. By paying the loan and having the suit dismissed, there will not be public record of a judgment against the defaulted borrower (an item that is usually identified and reported by credit bureaus).

JUDGMENT

The judgment is the document by which the court pronounces the outcome of the case being heard. The Federal Rules of Civil Procedure refer to a judgment as a decree and order from which an appeal lies (FRCP 54(a)).

The judgment entry, sometimes called the journal entry, is usually prepared by the attorney for the winning party, although in a small claims court the judge or referee will usually provide a written summary of the case and prepare the judgment. To be valid, a judgment entry must be signed by the judge. The clerk of courts will journalize the judgment entry and enter the final disposition of the case in the docket. The docket is the court's official record; a judgment must be part of that record to take legal effect.

The agreed judgment. If the defendant has sought legal representation, counsel may contact the institution's attorney to try to reach a settlement. If an arrangement is made, the document filed with the court is an agreed judgment or agreed journal entry. (The plaintiff—the institution—is the only party to approve or disapprove any settlement for less than the full amount claimed.) The entry states the terms of the agreement between the parties.

The default judgment. If a defendant fails to appear in court or respond to a complaint, the plaintiff can file a motion for a default judgment (FRCP 7(b)). Any charge in the complaint not specifically denied is deemed admitted (FRCP 8). A motion for default judgment states the grounds for the suit, summarizes the account (amount borrowed and repaid or canceled; interest and appropriate late, penalty, and collection charges accrued; and the balance due and owing), and requests that relief be granted by the court.

The motion package is also served on a defendant who may file a motion in opposition to the motion for default judgment. In practice, a defendant who has failed to respond to the original complaint is unlikely to reply to a motion for default judgment, but the possibility exists. Often, only the plaintiff's motion is before the court. In most instances, the case is decided on the basis of the documentation provided in the complaint and motion packages. In many municipalities, the entire process is completed without the institution's personnel making a court appearance; in some municipalities, the institution's attorney may or may not appear before a judge or referee prior to granting of the motion and subsequent judgment.

A default judgment may not be taken against an incompetent person unless he or she is represented by a guardian. Special care also must be taken in service of process and motions for judgment when suit is filed against military personnel (see 50 U.S.C. sec 520). If a lender is filing suit against a borrower in the armed forces, it should be sure its attorney is aware of this situation before suit is filed.

The summary judgment. The defendant may file an answer to the institution's complaint. Such an answer will likely deny all allegations made in the complaint and often will be accompanied by a request for a jury trial.

(Remember, the defendant-debtor is under no obligation to admit any allegation in the complaint, but any allegation not denied is considered admitted.) The defendant's strategy may be to appear ready to proceed with a lengthy and expensive trial when, in fact, he or she is creating a position from which he or she can bargain for a settlement.

The plaintiff replies to the defendant's answer to a complaint by a motion for summary judgment. The motion is supported by the plaintiff's sworn affidavit attesting to the genuineness of the claim and a brief in support of the motion. The brief acknowledges the defendant's answer, briefly restates the evidence provided with the complaint, and incorporates the answer and the evidence into the motion package. The motion package contains the motion, brief in support of the motion, affidavit of indebtedness, and judgment entry.

Many civil suits are resolved using the summary judgment motion. To defend against this motion, the defendant would have to file a motion with a sworn statement as to the truthfulness of his or her defense. Most loan borrowers, faced with signed promissory notes, loan applications, and exit interviews, hesitate to show such contempt for the court. (See Appendix A—General-9 for a sample affidavit of indebtedness).

Small Claims Court

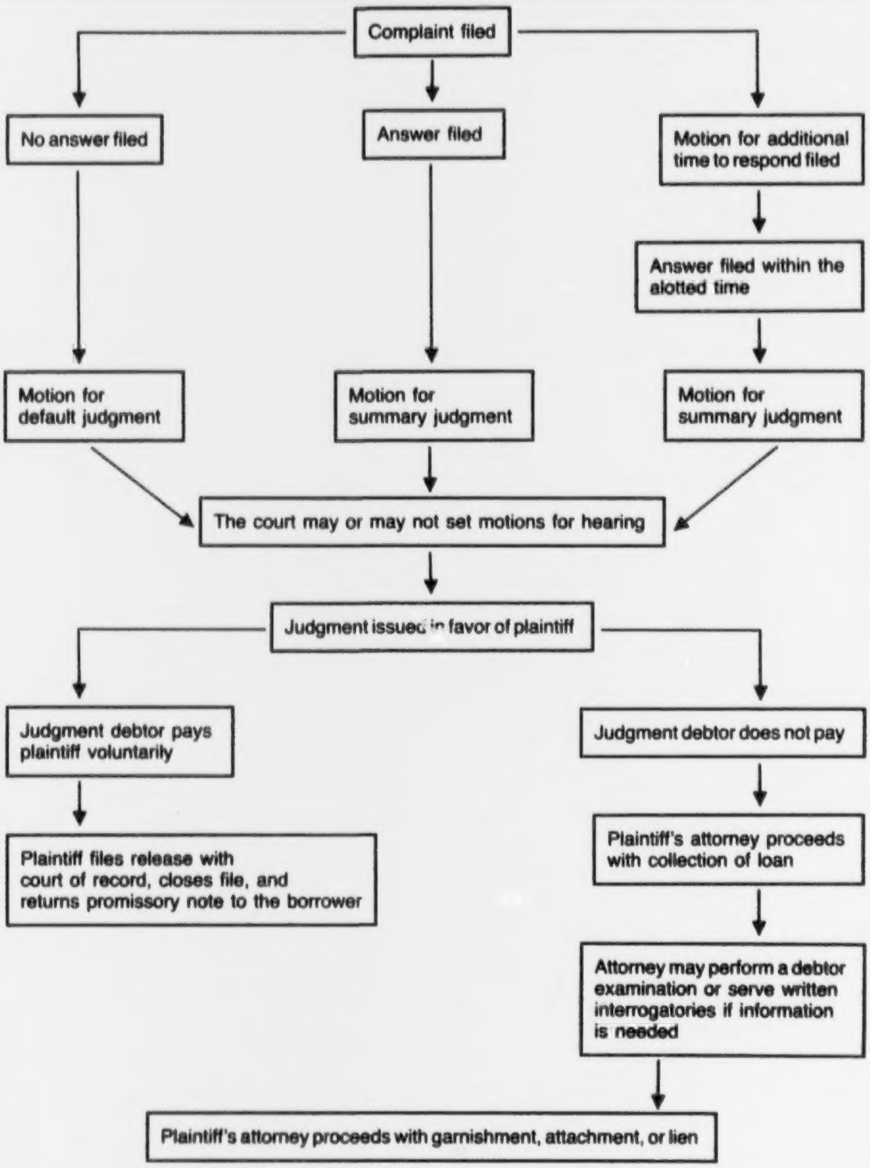
The small claims court is a division of the local municipal court. Small claims proceedings are less formal than municipal court proceedings and disputes generally are resolved quickly. The majority of small claims court cases proceed without either party being represented by legal counsel. Because an individual proceeds on his or her own behalf, most courts provide parties with written instructions as to the documentation to be provided and what to expect during the hearing.

A small claims court has jurisdiction in a case if the transaction giving cause to the action took place or the defendant has a residence or a principal place of business in the jurisdiction. (If there are two defendants, the residence or principal place of business of one defendant will establish jurisdiction.) For student loan collection purposes, a lending institution may file suit in a small claims court where a promissory note was signed.

There is a limit to the dollar amount (usually ranging from $1,000 to $2,500, excluding court costs and interest) on the cases heard before a small claims court. This amount varies by state, so local regulations should be confirmed with individual courts. Court costs are paid by the plaintiff and added to the total amount of the claim.

Most small claims courts will provide an institution with a claim form and a complaint form to complete and sign. The institution may be asked to explain the nature of its cause of action. The explanation should be as concise as

Table 10-1
Summary of Court Proceedings


Complaint filed
No answer filed
Answer filed
Motion for additional time to respond filed
Answer filed within the alotted time
Motion for default judgment
Motion for summary judgment
Motion for summary judgment
The court may or may not set motions for hearing
Judgment issued in favor of plaintiff
Judgment debtor pays plaintiff voluntarily
Judgment debtor does not pay
Plaintiff files release with court of record, closes file, and returns promissory note to the borrower
Plaintiff's attorney proceeds with collection of loan
Attorney may perform a debtor examination or serve written interrogatories if information is needed
Plaintiff's attorney proceeds with garnishment, attachment, or lien

possible; the institution should request principal, interest, attorney's fees (if represented by counsel), and court and collection costs as the amount claimed, and provide photocopies of promissory notes. Upon filing a claim with a small claims court, the institution will be expected to pay a small filing fee. It then will be notified of the hearing date. The clerk of courts will provide service of summons on the defendant.

The trial may be heard before a judge, but more often will be heard before a referee, who is a practicing attorney. (This will vary by municipality.) The setting is likely to be a conference room rather than a court room. The referee listens to testimony, reviews evidence, and makes a recommendation to the judge in favor of one party or the other. The person representing the institution should be familiar with the history of the individual case and know the amount due and owing the institution, including principal, interest, and penalties. It is advisable for an institution to copy the contents of the collection file before the trial and to offer to leave the copy with the court for review prior to judgment. The judge will issue judgment based upon the referee's findings.

If a case is heard before a judge, the verdict may be given at the close of the evidence. In most cases, and certainly if the case is heard before a referee, the parties will be dismissed and the judgment will be issued at a later date.

Execution on the Judgment

Once the plaintiff has obtained judgment, regardless of what court issued the decision, execution on that judgment may commence. Some debtors will acquiesce and pay the loan when judgment is issued. More commonly, however, the plaintiff will have to pursue payment. Most collection agencies will perform an asset search before recommending litigation. After judgment has been obtained, the plaintiff may proceed with a debtor's exam before the court or with a series of written questions (interrogatories) designed to determine which assets are available. When personal wages or bank accounts are garnished, a portion of funds obtained must be issued to the court for payment to the creditor. Although a number of factors contribute to the determination of how much will be garnished, the amount garnished may not exceed 25 percent of personal earnings.

A court order may also require that the debtor's property be "attached" (that is, sold to pay the judgment). This is a complicated and time-consuming procedure.

A lien on real estate owned by the debtor does not necessarily mean that immediate payment can be extracted from the debtor. It does provide the lending institution with a security interest in the property. Of course, any new lien is subordinate to the original mortgage and prior liens. In order to sell the property, the debtor would have to clear title by paying the amount owed. A lien may be foreclosed, but this is also a complicated and potentially expensive procedure.

Bankruptcy

When an individual is unable to fulfill his or her financial obligations he or she may petition a bankruptcy court to be declared bankrupt and have all debts owed at the date of filing discharged. Debts discharged in bankruptcy are written off by the creditor and the debtor is free of any legal obligation to pay the debt.

In order to preclude unnecessary bankruptcy and prohibit recent college graduates from avoiding payment of their student loans by having the loans discharged in bankruptcy, in 1976 Congress passed legislation preventing discharge of student loans (including Perkins and guaranteed student loans) until such loans have been due and owing for five years. The provision is intended to be self-executing and the lender or institution is not required to file a complaint to determine the nondischargeability of any student loan. When the federal bankruptcy laws were revised in 1978 and 1984, Congress included the five-year rule in bankruptcies proceeding under Chapter 7. With the Federal Debt Collection Procedures Act of 1990, the five-year period was extended to seven years, effective May 28, 1991. Exceptions to dischargeability are allowed if the loan was due seven or more years before the date the petition was filed and if the debt would impose undue hardship on the debtor. Table 10-2 summarizes bankruptcy regulations that apply to student loans.

DISCHARGEABILITY UNDER CHAPTER 7

Chapter 7 of the bankruptcy code is entitled "Liquidation." The law was developed to give a debtor a fresh start by liquidating or discharging existing debts.

Student loans, if funded or insured by the federal government or a nonprofit institution participating in a loan program, are automatically nondischargeable providing they have been in repayment for less than seven years and the debtor has not received a hardship exception to the bankruptcy laws. If bankruptcy occurs seven years beyond the date when the first payment became due, excluding all deferments, the loan can be liquidated. The seven-year lapse is counted by adding seven years to the grace period, to any deferment periods, and to any postponement periods.

Another exception to the nondischargeability of student loans is the hardship exception. The debtor must affirmatively seek a hardship exception from the bankruptcy court and show that payment of the loan would result in undue hardship to the debtor.

Automatic stay. The automatic stay prevents the creditor from collecting, attempting to collect, or billing on an account until final judgment is entered.

Table 10-2
Summary of Bankruptcy

Bankruptcy
Title 11 of the United States Internal Revenue Code

Chapter	Chapter 7	Chapter 13
Name	Liquidation	Adjustment of Debts of an Individual with Regular Income
Cited	11 U.S.C. 701 et seq.	11 U.S.C. 1301 et seq.
Primary outstanding purpose	To liquidate debtor's assets in settlement of his or her outstanding debt, giving the debtor a fresh start.	To pay all or a portion from future disposable income.
Who is the debtor?	An individual who resides or has a domicile, place of business, or property in the U.S.	A person with regular income or wages.
Who is not eligible?	Insurance companies, railroads, and some banking institutions.	A partnership.
Limit on amount of debt?	N/A	Unsecured debt less than $100,000 and secured debt less than $350,000.
Debtor's plan?	N/A	To present court with a plan to repay all or part of the unsecured debt and, usually, all of the secured debt.
Length of plan?	N/A	Three years is usually the maximum of plan duration.
Automatic stay on creditors?	Yes.	Yes, on consumer debt.
Is student nondischargeable	Yes, within seven years after the loan first became due.	Yes, within seven years after the loan first became due.
Exception to nondischarge of student loan?	Yes, because of undue hardship on the debtor, who must affirmatively request relief from the bankruptcy court.	Limited. Court must grant discharge after confirmation of plan but before all ability payments are made.
Automatic stay on codebtor/comaker?	No.	Yes.
Collect from an codebtor/ comaker who is not in bankruptcy?	Yes.	Limited. The creditor must present a dishonored negotiable instrument and seek affirmative relief from the court.
File proof of claim?	Yes.	Yes.

Reaffirmation? Encouraging reaffirmation is contrary to bankruptcy policy. Reaffirmation is allowed when a proceeding to determine dischargeability of the debt in question is in process, but the agreement must be approved by the court.

Collection on an account cannot resume until the stay is lifted. The stay is lifted when the discharge for eligible debts is ordered or when the action is terminated or dismissed. The automatic stay applies to all student loans, even those that will ultimately be nondischargeable. If the debtor of an account referred to a collection agency files bankruptcy, the institution should recall the account immediately.

CHAPTER 13 BANKRUPTCY

Chapter 13, "Adjustment of Debts of an Individual with Regular Income," is philosophically divergent from Chapter 7. When filing for Chapter 13, the debtor presents the court with a plan to pay all or part of the existing debt from future disposable income. Rather than a complete "fresh start," the debtor may participate in a payment plan for a maximum of three years. Changes were made to bankruptcy law in 1990 that extended the nondischargeability provision that has applied to Chapter 7 bankruptcies to Chapter 13 bankruptcies as well. To file for Chapter 13 bankruptcy, a debtor must file a claim with the federal bankruptcy court.

(See Chapter 1 of this book for further details on how institutions should behave with respect to debtors who file under Chapter 7 or Chapter 13.)

Chapter 11

Audits and Program Reviews

Student aid programs are generally subject to three types of audits: internal audits, external independent audits, and audits by federal agencies. In addition, special audits or audit-type program reviews may be conducted by state and federal agencies.

Internal Audits

Many institutions conduct ongoing internal audits of federal programs, including student aid programs, as part of their internal control procedures. The purpose of internal audits is to ensure compliance with federal standards and institutional policies and procedures, to identify potential problems, and to recommend corrective action. In the past, the federal government accepted internal audit reports prepared by institutional auditors as meeting federal program regulations. Now, however, all federal agencies require that external independent auditors conduct audits required by regulations.

Independent Audits

Institutions select an independent public accounting firm or an independent certified public accountant (CPA) to perform audits required by institutional policies and state and federal laws and regulations. Federal regulations require auditors to report their findings to the appropriate federal agency. Institutions should select auditors with demonstrated experience and knowledge of the specific areas included in the scope of the audit. The growing number and complexity of student aid program requirements and the frequency with which the rules change, make this expertise vital. In addition, a recent trend in federal legislation requires, as a condition for participation in the Title IV student aid programs, compliance with other federal program regulations (such as the anti-lobbying restrictions and drug-free schools and workplace rules).

Federal Audit Standards

Federal law requires institutions of higher education that receive federal funds to conduct an audit for federal purposes at least biennially; more frequent audits are encouraged by the Office of Management and Budget (OMB). The audits must be conducted by independent auditors who are not employees of the institution. Copies of the audit reports are submitted directly to the cognizant federal agency to which the institution is assigned.

The federal audit process has been modified in recent years as a result of the passage of the Single Audit Act of 1984. This legislation led to the development and implementation of two principal audit circulars that federal agencies must use in examining institutional stewardship of federal awards, including student financial aid funds. As a result, institutions participating in federal student aid programs sponsored by either the Department of Education (ED) or the Department of Health and Human Services (HHS) are required to conduct and report audit findings in accordance with the appropriate OMB circular and the related federal agency regulations.

Public colleges and universities may be included in a single, comprehensive audit of a state or local governmental entity, conducted in accordance with the Single Audit Act of 1984 and OMB Circular A-128, *Audits of State and Local Governments*. Independent colleges and universities are required to have audits made in accordance with statutory requirements and the provisions of Circular A-133, *Audits of Institutions of Higher Education and Other Nonprofit Organizations*. Circular A-133 became final on March 16, 1990, and applies to fiscal years of institutions of higher education and other nonprofit organizations that begin after January 1, 1990. This circular, which must be used by the majority of U.S. colleges and universities, replaces the previous audit rules provided under Attachment F of Circular A-110.

In the past, the standards for federal student aid audits were prescribed in audit guides prepared and/or recommended and issued by ED and HHS. The most recent ED audit guide was issued in March 1990. The guidance for student aid audits under the new Circular A-133 will be provided in a separate compliance supplement that will be issued by OMB in the spring of 1991. Institutions should carefully review the applicable OMB circular and compliance supplements for the student aid programs as part of their preparation for required audits. The student aid supplement to Circular A-133 will be the principal policy document used by independent auditors in their performance of institutional audits.

Federal Audits

A federal agency may initiate and conduct an audit of an institution as part of a scheduled audit work plan or because of indications of problems at an individual institution. ED and HHS conduct audits of their respective student aid programs for both reasons. The general objectives of federal student aid audits are to assess the reliability of financial data, the adequacy of internal control systems, and compliance with program regulations. Each federal agency's Office of the Inspector General is responsible both for evaluating (by means of desktop reviews and on-site evaluations of CPA workpapers) the quality of the audit reports it receives from independent auditors and for issuing guidance on the performance of audits.

Both ED and HHS have separate audit resolution offices that issue program determination letters for audit deficiencies, monitor and track compliance with audit findings, and recommend administrative action of programs reviews of problem schools. Institutions have 45 days to appeal an ED determination of audit liability and obtain a hearing before an administrative law judge within 120 days.

The ED or HHS Inspector General may initiate a special audit of an institution of higher education. These audits may be broad in scope or limited to particular federal programs or areas within programs and may be initiated as part of an audit plan or for reason of alleged noncompliance with federal law and regulation.

Program Reviews

The purpose of the program review process of federal student aid programs is to ensure proper administration of the programs, provide technical assistance to institutions, and monitor compliance. The scope of program review focuses on operational aspects of an institution's student aid system with coverage of fiscal and accounting procedures. In addition, the assessment of liabilities for incorrect practices may be included in the findings of the review. ED program reviews are generally conducted by the agency's regional office personnel. The program review process involves steps similar to the independent audit but is usually shorter in length.

NOTIFICATION AND PREPARATION

ED notifies institutions two weeks in advance of a program review. During that period, the institution is expected to accomplish the following:

- prepare well-organized and accessible student records;
- document all changes in folders;
- alert appropriate staff/offices about the impending review;
- provide adequate workspace for reviewers;
- make available a list of aid recipients for sample selection;
- reconcile financial aid folders with records in the business and registrar's offices; and
- ensure that the financial aid office and the business office have copies of current regulations, handbooks, and other related policy documents.

During the site visit, it is recommended that at least one institutional representative be assigned responsibility to respond to questions.

AREAS OF REVIEW

A program review is a comprehensive evaluation of many facets of a financial aid program. ED identifies several subject areas that it considers fall within the general scope of its review. These areas may include review of student files, college work-study records, fiscal records, Perkins Loan collection/due diligence records and procedures, institutional policy and procedures, and general administrative capability. Among the subjects specified under Perkins Loan collection are promissory notes, disclosure statements, exit interviews, grace period, prepayment contracts, billing, past-due notices, skip-tracing, and collection.

CONCLUSION AND FINDINGS

At the conclusion of the review, an exit interview is conducted. This final meeting generally includes the program reviewer(s), the financial aid administrator, and the business officer. A representative of the president's office, if available, may also participate. At this time, the findings are summarized and recommendations are made.

Program review staff prepare an official written report that is issued to the institution within 30 days of the completion of the program review. The report includes a detailed explanation of any areas of noncompliance that were identified during the program review and recommendations that may have been made at the final interview. The report also specifies any necessary corrective action for each finding. For example, if, during the review, it was discovered that the institution was improperly awarding federal funds, the institution may be asked to submit additional documentation to support disbursements and, in some cases, it may be required to take additional steps to ensure accuracy and compliance.

The institution is generally given 30 days after receipt of the report from ED to respond to the findings of the report. The school has the opportunity to submit additional documentation to support areas that have been questioned and may describe any corrective actions implemented as a result of the program review.

As a closing measure, ED evaluates the institution's response and documentation, makes a final determination to resolve each finding, and issues a final report including any assessment of liabilities. As in the audit process, institutions that do not agree with penalties assessed have recourse to an appeal mechanism. Appeals must be made within 45 days of the institution's final determination letter. An ED official may resolve the appeal informally or arrange for a hearing with an administrative law judge. Once an appeal has been exhausted, the institution must remit funds to the government to cover any remaining outstanding amounts due.

Chapter 12

The Regulatory Process

Regulations governing the federal student aid programs are written to implement laws passed by Congress and signed by the President. New regulations, which are usually introduced as proposals for public comment, may be inspired either by changes stemming from the enactment of new laws or the amendment of existing statutes, or by new federal agency interpretations of, or technical corrections to, current rules.

Whatever the rationale for implementing a new regulation, the Administrative Procedure Act generally requires federal agencies to publish a notice of proposed rulemaking (NPRM) in the *Federal Register* (*FR*) and to give interested persons an opportunity to submit comments on the proposed rule. An NPRM presents the text of the proposed rule and provides background information on the statutory and regulatory basis for the rulemaking. The notice also includes information on where and when to submit public comments. If the proposal involves amending a current rule because of compliance problems or other technical matters, supplementary information may be provided explaining the federal agency's rationale for the proposal.

In many instances, the Departments of Education (ED) and Health and Human Services (HHS) alert institutions that participate in student loan programs about proposed changes to the regulations by sending the schools reprints of *FR* notices. These notifications are not required by law and are generally sent chiefly to solicit the remarks of affected parties. The relatively brief period provided for public comment—the standard period is 45 days from date of publication—and the delays caused by the reproduction of reprints and the use of bulk mailing often prevent institutions from receiving these notices in time to prepare and submit a response to the agency by the official deadline.

Consequently, institutions should develop their own procedures for monitoring the regulatory process for any impending changes. Regular scanning of the *FR*—and of its monthly indexes—is probably the most reliable means of keeping abreast of forthcoming action. Most major regulatory changes are also covered by the educational news media and many higher education associations disseminate information about proposed and final rulemakings.

In addition to the specific NPRMs printed in the *FR*, each federal agency publishes a semiannual regulatory agenda that identifies each regulatory action that has taken place or is planned. Although the coverage of each item is brief, the information amounts to a useful compendium of nearly all regulatory actions that are planned, underway, or completed.

After the official comment period closes, the federal agency that issued the NPRM reviews and analyzes all of the public comments, provision by provision. The agency must determine if the proposed regulatory action remains appropriate and should still be taken; if so, the agency will take steps to prepare and publish a final regulation.

The final rule is published in the *FR*. This rule includes the statutory and regulatory basis for the rulemaking; in the case of an amended rule, an overview of principal changes to the existing requirements; the effective date of the regulation; the text of the new rule; and, if an NPRM was issued, responses to principal public comments that were submitted.

In cases where a regulatory change involves only selected provisions of a complete regulation, only the specific provisions slated for change are printed in the notice and the final regulation. As a result, institutions must carefully document the new provisions and incorporate them into the body of the longer regulation. One to two years after it is finalized, a new rule is incorporated into the *Code of Federal Regulations* (CFR) and published under the appropriate CFR title. In recent years, ED has published *Current Student Aid and Other Related Regulations* that consolidates the principal Title IV rules into one document.

At present, the proposed or final rulemaking processes seem to follow no established schedules. Although a law may be enacted that specifies dates on which the appropriate federal agency must promulgate regulations, recent experience has demonstrated that many agencies, including those administering student aid programs, frequently do not meet the statutory deadlines. It is important to note, however, that the effective dates for requirements established by law must be met by those persons or entities responsible for compliance, even if the rulemaking process has not been completed.

Institutions participating in the federal student loan programs should assume an active role in the regulatory process. Institutional administrators and managers should not only be aware of current requirements and establish policies and procedures to comply with the rules, but should also support the review and analysis of proposed regulations to determine if their institutions are able to meet any new requirements. A school should identify the steps it would have to take to comply with any new regulations. If the results of this kind of analysis show that the institution would be adversely affected by implementation of all or some of the provisions of the proposed regulation, the school should make its assessment known to the agency issuing the regulation.

A public comment letter should be written in a clear and concise manner. The response should follow any agency directions embodied in the NPRM and must be addressed and received by the agency in accordance with its instructions. It is recommended that each comment be labeled according to the specific CFR part or section number and/or heading to which it refers. Reasons for agreement or disagreement should be explained and, if possible, alternatives, compromise solutions, and specific changes to the language of the proposed regulation should be recommended. Participation in the federal rulemaking process, including in-depth analysis by an institution of the costs and benefits of proposed regulatory requirements, not only gives the school a public voice but also assists the institution as it prepares for the implementation of new requirements.

The principal regulations that govern the federal student loan programs covered in this book are written under Title 34 (Education) and Title 42 (Public Health) of the CFR:

- 34 CFR 668—Student Assistance General Provisions
- 34 CFR 674—Perkins Loan Program
- 34 CFR 682—Guaranteed Student Loan and PLUS Program
- 34 CFR 673—Income Contingent Loan Program
- 42 CFR 57 (Subpart C)—Health Professions Student Loans
- 42 CFR 57 (Subpart D)—Nursing Student Loans
- 42 CFR 60—Health Education Assistance Loan Program

"Dear Colleague" Letters

Federal agencies also offer information or publish other materials that lend interpretation to regulatory requirements. ED issues several "Dear Colleague" letters each year covering the Title IV student aid programs. These letters may alert institutions to forthcoming regulations or to recent statutory changes to the programs, outline procedures for specific actions that institutions must take in preparing and filing reports and other documentation with ED, and announce new publications and training programs.

"Dear Colleague" letters are sometimes written in a question-and-answer format designed to clarify existing policy, procedures, or rules where problems of interpretation have been identified. An institution should retain these documents along with other regulatory reference materials. Although the interpretative information presented in these letters (and in the supplementary information sections to NPRMs and final regulations) are not *bona fide* regulations, they are often cited and used by federal agencies in compliance assessments. HHS also sends written communications to institutions participating in the student loan programs that it administers. These letters are called "Policy Memoranda" and embody much of the agency's interpretation of statutes and regulations.

Both ED and HHS publish a variety of documents, such as guidebooks, that address and interpret regulatory requirements. Each institution should maintain as complete a library as possible of these resources. All campus personnel who are involved in the administration and management of federal student loan programs should be encouraged to refer to this library. For a list of key federal reference documents see Appendix E.

Chapter 13

Consumer Credit Protection and Related Statutes

This chapter summarizes key statutes associated with student loan collection and disclosure.

Consumer Credit Protection Act

The Consumer Credit Protection Act (CCPA) was enacted by Congress in 1968. It imposes disclosure requirements and garnishment limitations on creditors when transacting business with individuals. Many state laws are modeled after the federal statute. The CCPA protects an individual's personal and family accounts. It does not address debts incurred by businesses.

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act of 1978 (15 U.S.C. 1601 et seq.), as amended in 1984, is an amendment to the CCPA and is known as Title VIII of the CCPA. The purpose of the Fair Debt Collection Practices Act (FDCPA) is to prevent debt collectors from using unfair and misleading tactics in the collection of debt and to ensure that debt collectors who refrain from unfair debt collection are not disadvantaged in the marketplace. The institutional loan manager and collector must be aware of the provisions of the FDCPA and be certain that collection agencies engaged by the institution are in compliance with federal laws.

For purposes of the FDCPA, a debt collector is a third party hired to collect a debt, a creditor who uses another name when collecting a debt, or an attorney who regularly collects debts. Specifically excluded from the FDCPA are the creditor and the creditor's employees who perform in-house collection of accounts receivable and state and federal employees acting in their official capacities, including persons serving summons. However, although the FDCPA specifically excludes creditors and in-house collectors, it does provide an established, dependable foundation for training in-house collectors.

SKIP-TRACING UNDER THE FDCPA

The FDCPA respects the privacy of the debtor while allowing the collector to obtain the debtor's address or telephone number. The debt collector must identify himself or herself, but may identify the employer only if specifically requested to do so. The debt collector is not required to inform a third party (usually, a former neighbor or a reference given by the debtor) that the purpose of a call or correspondence is debt collection. The debt collector may not contact a third party more than once unless asked to call back or unless further contact is necessary to obtain full and correct information. Correspondence must not indicate the existence of a consumer debt and postcards may not be used.

Once the debt collector is aware that the debtor is represented by an attorney and can readily obtain the attorney's name and address, the debt collector is prohibited from contacting any person other than the attorney. There is an exception to this rule: if the attorney fails to respond to the debt collector within a reasonable period of time, the debt collector may resume skip-tracing.

COMMUNICATIONS WITH THE DEBTOR UNDER THE FDCPA

Unless so directed by the debtor, the debt collector must contact the debtor between the hours of 8:00 a.m. and 9:00 p.m. The debt collector must refrain from contacting the debtor at his or her place of business if the collector is aware, or has reason to know, that the debtor's employer prohibits such communications. Communications, other than skip-tracing, are limited to direct communications between the debt collector and:

- the debtor;
- the debtor's attorney;
- a consumer reporting agency, as permitted by law;
- the creditor;
- the creditor's attorney; and
- the debt collector's attorney.

The debt collector may also speak with anyone whom the debtor expressly permits the collector to contact, or to persons necessary to effectuate a court judgment.

THE DEBTOR'S RIGHTS

The debt collector must comply with the debtor's written request to cease further communication. Upon receipt of such demand, the debt collector has the right to notify the debtor that the debt collector has concluded efforts with the debtor; that the debt collector or creditor may invoke specific remedies; or that the debt collector or creditor intends to invoke a specific remedy.

CONDUCT FORBIDDEN UNDER THE FDCPA

The FDCPA specifically prohibits any "conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." The threat of harm to the person or to his or her reputation or property; the use of profanity; causing a telephone to ring continuously; repeatedly engaging any person in conversation with intent to annoy, abuse, or harass; and false, deceptive, or misleading representations are all in violation of the FDCPA.

The debt collector may accept a check postdated by more than five days only if the debt collector notifies the debtor in writing, between three and 10 business days prior to depositing, of the intent to deposit the postdated check. The debt collector may not deposit or threaten to deposit a postdated check prior to the date on the check.

The debt collector may not cause the debtor to assume charges for collect telephone calls or telegrams if any trickery or concealment of the true purpose of the communication is made. The debt collector cannot make false statements or statements that mislead the debtor.

Regulation Z

Under the Truth-in-Lending Act of the CCPA, the Board of Governors of the Federal Reserve System issued Regulation Z. This regulation requires that the debtor be provided with a concise statement of the cost of financing—that is, the cost of credit transactions, including student loans. The finance charges, usually stated in the form of an annual percentage rate, must be made available to the student loan borrower, in writing, before the institution actually makes the loan. Although Regulation Z permits the truth-in-lending statement to be part of the promissory note, the statement is usually a separate document made available to the borrower when the loan application is made. The statement should be signed by the borrower and a copy should be kept on file at the lending institution. Although a student loan may have a comaker or endorser in addition to the borrower, the lending institution is not required to furnish the truth-in-lending statement to this party, but may provide disclosure at its option. Regulation Z now applies to HHS loans but not to Perkins Loans, which were exempted from the requirement.

Late payment fees, penalties, and collection costs are not included in the disclosure requirements because they accrue only as the result of an unanticipated delinquency or late payment. The debtor can avoid the fees by remitting timely payments or filing timely deferment, postponement, and cancellation requests.

Regulation B

Regulation B of the CCPA prohibits the lending institution from discriminating against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age (providing the applicant otherwise has the capacity to be party to a binding contract), or because all or part of an applicant's income is from a public assistance program. A creditor may take into account any applicable law, regulation, or executive order that restricts dealings with citizens of other countries.

Family Educational Rights and Privacy Act of 1974

The Family Educational Rights and Privacy Act of 1974 (20 U.S.S. 1232g et seq.) requires every educational institution to publish its policies and explain how it fulfills the requirements of the act. This statement is usually found in a school's catalog or bulletin.

The institution may give its students more rights than those required by the Family Educational Rights and Privacy Act (FERPA), but must state at least the following:

- how it informs students and parents of their rights;
- how parents or eligible students may inspect educational records and when the institution may deny the request;
- a statement that personally identifiable information will not be released without the written consent of a parent or the student;
- a statement as to whether or not the institution has a policy detailing when prior written permission is not needed to release information;
- a record of disclosures for parents or a student to inspect; and
- a list of information designated as "directory information."

FERPA does not prevent credit reporting or the use of collection agencies in the course of collecting a student loan. The information provided to the credit bureau is made available to those third parties inquiring to the bureau for a credit report.

Regulations covering FERPA are found under 34 CFR 99. Several FERPA provisions were revised in 1988. The publication of final rules on April 11, 1988, provides an appendix of comments and changes to the rules. The regulations specify their purpose, the rights of parents and students to inspect and review educational records, institutional disclosure of personally identifiable information, and related matters.

Appendix A: *Forms, Sample Letters, and Other Documents*

This appendix is intended to illustrate the text by providing examples of documents used in the management and collection of student loans. Some of the documents reprinted here are published by federal agencies; others are copied from materials devised and used by a variety of institutions across the country. Whatever their provenance, the exhibits are not intended to be copied or otherwise used on the assumption that they represent or satisfy current federal requirements. Official forms and requirements are subject to frequent change and an institution should establish that the forms it intends to use are appropriate for their function.

The exhibits are ordered according to the loan programs they illustrate.

GENERAL-1: Illustrative Example of Personal and Confidential Information Form

GENERAL-2: Illustrative Example of Truth-in-Lending Statement

GENERAL-3: Sample Billing Statement

GENERAL-4: Sample 15 Days Past-Due Letter

GENERAL-5: Sample 45 Days Past-Due Letter

GENERAL-6: Sample 60 Days Past-Due Letter

GENERAL-7: Sample Final Demand Letter

GENERAL-8: Illustrative Example of Totally and Permanently Disabled Medical Report Form

GENERAL-9: Illustrative Example of Affidavit of Indebtedness

PERKINS-1: Perkins Loan Statement of Rights and Responsibilities

PERKINS-2: Revised Perkins Loan and National Direct Student Loan Promissory Notes

PERKINS-3: Illustrative Example of Request for Deferment of Repayment

PERKINS-4: Illustrative Example of Physician's Affidavit of Temporary Total Disability

PERKINS-5: Illustrative Example of Request for Partial Cancellation of Loan Due to Teaching Service

PERKINS-6: Perkins Loan Program Assignment Form

HHS-1: Illustrative Example of Health Professions and Nursing Loans Statement of Rights and Responsibilities

HHS-2: HPSL Promissory Note

HHS-3: NSL Promissory Note

ILP-1: Sample Donor Agreement

GENERAL-1: Illustrative Example of Personal and Confidential Information Form

This form must be completed in its entirety and returned to the Office of the Bursar before funds may be advanced on any loan. (PLEASE PRINT)

Name ______________________ **Social Security No.** ______________

Permanent Address: Street ______________ **Local Address:** Street ______________

______________________ ______________________

City ______________________ City ______________________

State ______________________ State ______________________

Telephone No. ______________ Telephone No. ______________

Birth Date ______________ **Drivers License No. and State** ______________

Your Part-Time or Full-Time Job ______________________________
Company Name

____
Street Address

College ______________________ **Major** ______________________

Class: Fresh. _____ Soph. _____ Jr. _____ Sr. _____ Grad._____

Expected Date of Graduation _____

Parent or Guardian ______________ Telephone No. ______________

Complete Address ______________________________________

Employer's Name ______________________________________

Employer's Address ______________________________________

Spouse's Name ______________ Spouse's Employment ______________

Spouse's Parents ______________ Telephone No. ______________

Complete Address ______________________________________

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Grandparents ______________________________

Complete Address ______________________________

Brothers and sisters over 18 not living at home (list current names of sisters, i.e. Mrs. James R. Brown):

Name ______________ Address ______________

____

Name ______________ Address ______________

____

Personal References (clergy, former teacher, parent's neighbor):

Name ______________ Address ______________

____

Name ______________ Address ______________

____

Insurance Company or Agent:

Automobile ______________ Address ______________

____

Life ______________ Address ______________

____

Credit Cards, Charge Accounts, and Other Loans (use reverse side if necessary):

____

____

____

Name and Location of Bank at which You Have an Account:

____

____

High School:

Name ______________________ Address ______________________

THE ABOVE INFORMATION IS CORRECT AND COMPLETE AND I HEREBY AUTHORIZE VERIFICATION AS REQUIRED BY THE UNIVERSITY.

______________________________ ______________

Signature Date

GENERAL-2: Illustrative Example of Truth-in-Lending Statement

Account Number ______________________ Date __________

Name of Borrower ______________________

Address ______________________

____

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid if you make all the payments as scheduled
$ __________	$ __________	$ __________	$ __________

See the promissory note for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

Your payment schedule will be:

Number of Payments	Amount of Payment	When Payments are Due
__________	__________	__________
__________	__________	__________
__________	__________	__________

Late charge: If a payment is late, you may be charged __________.

Repayment: If you pay off early, you will not have any penalty.

Itemization of the amount financed of $ __________

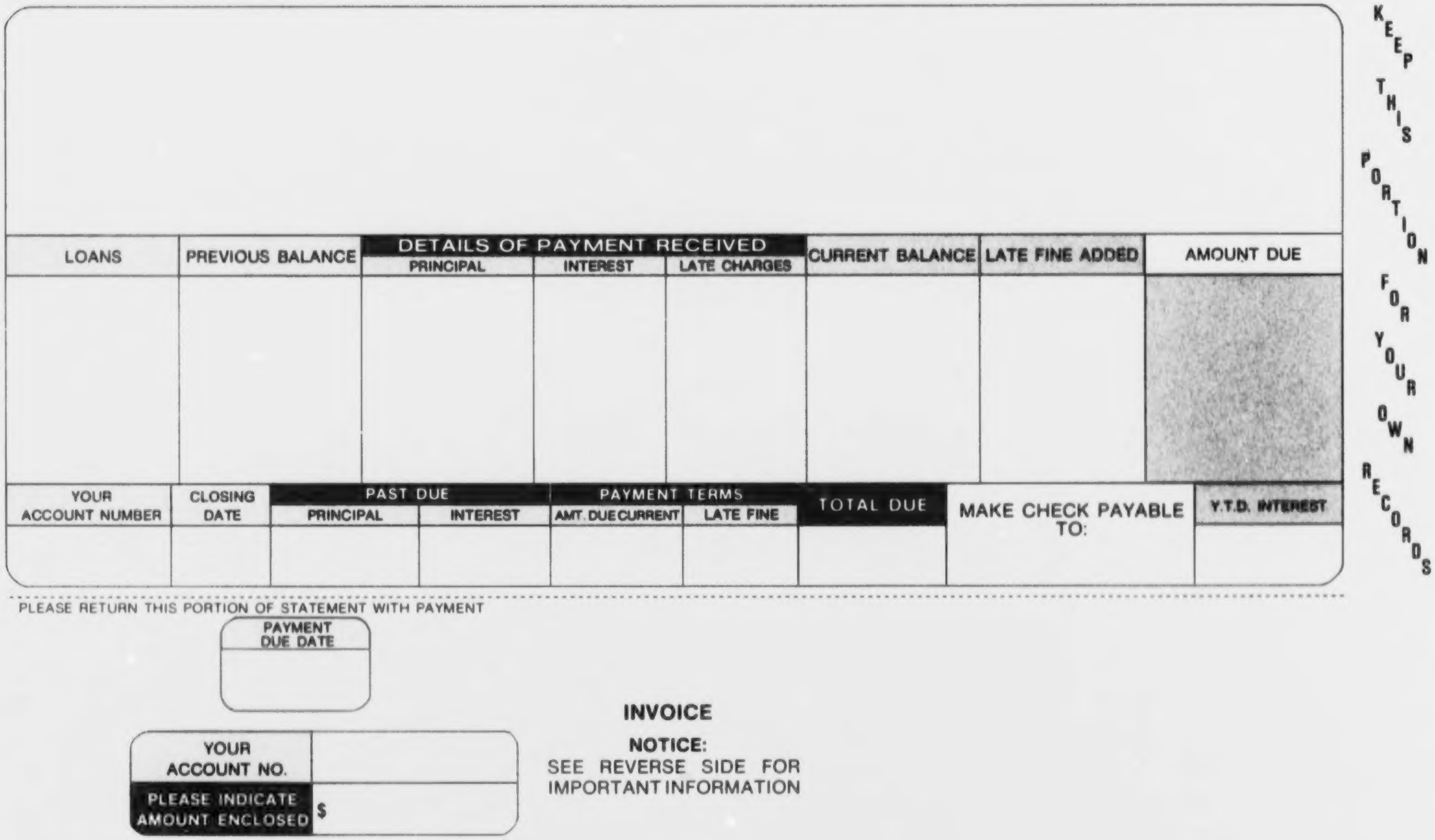
$ __________ Amount given to you directly.

$ __________ Amount paid to the institution on your behalf.

I have received a copy of this statement.

____

Signature of Student



LOANS	PREVIOUS BALANCE	DETAILS OF PAYMENT RECEIVED			CURRENT BALANCE	LATE FINE ADDED	AMOUNT DUE
		PRINCIPAL	INTEREST	LATE CHARGES			

YOUR ACCOUNT NUMBER	CLOSING DATE	PAST DUE		PAYMENT TERMS		TOTAL DUE	MAKE CHECK PAYABLE TO:	Y.T.D. INTEREST
		PRINCIPAL	INTEREST	AMT. DUE CURRENT	LATE FINE			

KEEP THIS PORTION FOR YOUR OWN RECORDS

PLEASE RETURN THIS PORTION OF STATEMENT WITH PAYMENT

PAYMENT DUE DATE

INVOICE

NOTICE:
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

YOUR ACCOUNT NO.	
PLEASE INDICATE AMOUNT ENCLOSED	$

GENERAL-3: Sample Billing Statement

GENERAL-4: Sample 15 Days Past-Due Letter

01/15/01

Borrower
123 Elm Street
Any City, Any State 12345

Dear Borrower,

Your loan is 15 days past due. Please forward your payment to us as soon as possible in order to bring your account into a current status.

Sincerely,

Loan Office
XYZ College

GENERAL-5: Sample 45 Days Past-Due Letter

02/15/01

Borrower
123 Elm Street
Any City, Any State 12345

Dear Borrower,

It is a common trait to put things off until one gets some free time. Perhaps this has happened to you. Recently we asked you to look into the overdue payment of $ ____________, but as yet we have not heard from you.

It is imperative that you notify this office if your monthly payments will be late. Our institution is willing to work with borrowers during the repayment period, but we must have your cooperation in order to do so.

We will expect to hear from you before the end of this month. If you have any questions about your student loan, please contact this office.

Sincerely,

Loan Office
XYZ College

GENERAL-6: Sample 60 Days Past-Due Letter

02/30/01

Borrower
123 Elm Street
Any City, Any State 12345

Dear Borrower,

Federal regulations governing your loan account allows XYZ College to refer accounts to collection agencies if they become 90 days or more past due. Failure to do so could result in the loss of the loan program for failure to use "due diligence."

Our records show that your account has reached at least 60 days past due, and you have not taken any action to bring your account current. Therefore, if payment of $ ____________ is not received, or if arrangements are not made with us, within 30 days from the date of this letter, your account will be referred for collection. This could result in the total unpaid balance being due immediately, as agreed to when you signed your promissory note.

A self-addressed envelope is provided for your use in sending your check. Please do not delay! Send your check today!

Sincerely,

Loan Office
XYZ College

GENERAL-7: Sample Final Demand Letter

03/30/01

Borrower
123 Elm Street
Any City, Any State 12345

Dear Borrower,

We are again compelled to write to you concerning your past-due loan in the amount of $ ____________. We pointed out the seriousness of this account in our last letter, and indicated that we would take more drastic action if payment wasn't forthcoming.

Since we received neither a payment nor a letter explaining the reason for nonpayment, we are now serving notice that if we do not receive your payment by ____________, we will place your account in the hands of our collection agency. We regret to have to take this step, but have no alternative. We will also accelerate the due date of the remainder of your loan, making the remaining outstanding balance plus interest immediately due and payable.

This action will, of course, affect your credit reputation. We therefore again request that you consider the matter and forward your payment by return mail.

Sincerely,

Loan Office
XYZ College

GENERAL-8: Illustrative Example of Totally and Permanently Disabled Medical Report Form

Medical Report

NOTICE TO PHYSICIAN: The Federal Student Loan programs provide for cancellation of the loans in the event the borrower becomes permanently and totally disabled. This means the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death. A determination cannot be made by us until this form has been completed and returned.

Name of Claimant *(Last, First, Middle)*	Social Security No.	Date of Birth *(Month, Day, Year)*

Sex ☐ Male ☐ Female	Address of Claimant *(Number, Street, City, State, and ZIP Code)*

1. HISTORY	A. When Did Present Illness or Injury Start?	B. Date Applicant Became Unable to Work

C. Is There A Previous History of This Illness? ☐ Yes ☐ No *(If "Yes" describe)*

2. PRESENT CONDITION—ALL MAJOR IMPAIRMENTS A. Subjective Symptoms

B. Objective Findings *(Give report of X-rays, ECG's, laboratory or diagnostic tests, WITH DATES.)*

C. Applicant is ☐ Ambulatory ☐ Bed Confined ☐ House Confined ☐ Hospital Confined *(Provide any pertinent comments)*

3. DIAGNOSIS

4. TREATMENT A. Therapy and Response

B. Date of First Visit	C. Date of Last Visit	D. Frequency of Visits	E. When Did You Last Examine Claimant?

In my opinion, this patient ☐ is/☐ is not totally and permanently disabled.

Typed or Printed Name and Address of Physician or Organization *(Street, City, State, and ZIP Code)*	Signature Title Date

GENERAL-9: Illustrative Example of Affidavit of Indebtedness

______________________, being duly sworn by me, the undersigned Notary
(Name)
Public, deposes and says:

1. He/she is a ____________________ of ____________________
(Title) (Institution)
organized, existing, and doing business under any by virtue of the laws of the state of ____________________.

2. That the affiant is a duly authorized agent of the Plaintiff in the claim and as such makes this Affidavit.

3. That the affiant is familiar with the books of original entry and of the business of the Plaintiff.

4. (a) That according to the books of the Plaintiff and within the personal knowledge of the Affiant, the Defendant, ____________________, is indebted to the Plaintiff in the amount of $ ____________________ principal plus interest at the rate of ______% per annum from ____________________ 19____, plus late charges of $ ______________ per month as provided in the contract.

(b) That said Exhibits attached hereto and incorporated by reference are certified and true copies of documentation supporting this claim by Plaintiff against Defendant.

5. That Plaintiff has allowed Defendant all just credit, deductions, and set-offs with regard to the above-described claim.

Date ____________________ Affiant ______________________________

STATE OF ______________
SS:
COUNTY OF ____________

Before me a Notary Public, in and for said County and State, personally appeared ____________________ who acknowledges the foregoing Affidavit of Indebtedness this ______________ day of ____________________, 19____.

____
Notary Public
Seal and Stamp

PERKINS-1: Perkins Loan Statement of Rights and Responsibilities

Your Perkins Loan is a serious legal obligation. Therefore, it is extremely important that you understand your rights and responsibilities. When you, the student borrower, sign this statement it means that you do understand your responsibilities and you agree to honor them.

1. I understand I must, without exception, report any of the following changes to __________________ if:

   a. I withdraw from school
   b. I transfer to another school
   c. I drop below half-time status
   d. my name should change (for example, because of marriage)
   e. my address or my parents' address changes
   f. my Social Security number should change

2. When I graduate or withdraw from __________________ I must arrange for an exit interview by calling ____________.

3. My first monthly payment will be due ______ months from the time I cease to be at least a half-time student.

4. My monthly payment will be at least $______. It may be more if the amount borrowed is sufficient to require larger payments. The maximum length of time for repayment is 10 years.

5. The ANNUAL PERCENTAGE RATE of ______ percent will be the FINANCE CHARGE based on the unpaid balance and it will begin to accrue nine months after I cease to be enrolled as at least a half-time student.

6. I understand that I may request deferment of my Perkins Loan payments if:

   a. I enroll for at least half-time study at an institution of higher education
   b. I enter military service on active duty
   c. I enter VISTA or the Peace Corps
   d. I enter volunteer service in a private nonprofit VISTA or Peace Corps-type organization
   e. I serve as an officer in the U.S. Public Health Service Commissions Corps
   f. I become temporarily totally disabled or am unable to work because I am providing care required by my spouse who is so disabled
   g. I enter an intership program determined to be eligible for Perkins deferment

7. Cancellation will be granted for certain types of elementary or secondary school teaching; for military service in areas of hostilities; for full-time staff members in Head Start; for service in the Peace Corps; and in the event of death or permanent disability. I understand the school must be informed of such status.

8. I understand that my loan carries a nine-month period of grace and I will be entitled to an additional six-month period of grace after completion of each deferment period of study, service, or disability as described in number 6.

9. I understand that if I fail to repay my loan as agreed, the total loan may become due and payable immediately without notice and legal action could be taken against me.

10. I understand that the lending institution may, in the event of my failure to make any payment as scheduled, assess a penalty charge and, in the event of my default, require me to pay all resonable costs of collection and fees.

11. I will promptly answer any communication from ______________ regarding the loan.

12. I may prepay at any time. Interest will be reduced by prepaying.

13. If I cannot pay on time, I must contact the ______________ Loan Office to make arrangements.

14. I realize that aggregate loan limits are $ _______ for a graduate or professional student, $ _______ for an undergraduate who has completed two years toward a degree, and $ _______ for an undergraduate who has not completed two years toward a degree. Acceptance of this loan will reduce my eligibility for other aid to meet my school budget.

15. I authorize ____________________ to contact any school that I may attend, to obtain information concerning my student status, my year of study, my dates of attendance, graduation or withdrawal, my transfer to another school, or my current address. This authorization in effect until my loan is paid in full.

16. I authorize ______________ to report this loan to credit reporting bureaus.

* *

THIS IS A LOAN, WHICH MUST BE REPAID

* *

I ATTEST THAT I HAVE READ AND UNDERSTAND THE RESPONSIBILITIES AND OPTIONS AVAILABLE TO ME, AND THAT I WILL ADHERE TO THEM.

____________	______________________________	______________
Date	Signature of Student	Student Number

PERKINS-2:

Revised Perkins Loan and National Direct Student Loan Promissory Notes

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

December 1990

CB-90-24(LD)

SUMMARY: This letter provides revised Perkins Loan and National Direct Student Loan promissory notes.

FEDERAL STUDENT FINANCIAL AID HANDBOOK REFERENCE: This letter supplements the information contained in Chapter 6 of the 1990-1991 Federal Student Financial Aid Handbook.

Dear Colleague:

A number of institutions have inquired about reprinting the Perkins Loan and National Direct Student Loan promissory notes that appear in Appendices A through D of the Perkins Loan Program regulations (34 CFR Part 674). The institutions noted several typographical errors and wanted to know if the Department planned to issue revised promissory notes in the near future.

In response to those inquiries, we have enclosed revised sample promissory notes that have been approved by the Secretary. The sample promissory notes have been revised to correct typographical errors and to clarify the requirements for handling prepayments made by borrowers. These revised sample promissory notes reflect the current regulatory requirements and contain no policy changes. Although not required, we encourage each institution to use the revised promissory notes as soon as possible.

The Department plans to issue in the near future a Notice of Proposed Rulemaking that will include these proposed revisions to the current promissory notes. After comments are received, the Department will issue final regulations which will include revised promissory notes in the Appendices. The final regulations will require all institutions to use the revised promissory notes. While we have carefully reviewed the enclosed revised sample promissory notes for your immediate use and do not anticipate that additional revisions will be necessary as a result of comments received by the Department, institutions may wish to limit the number printed until the proposed rules have been commented upon and final regulations and promissory notes are published.

If you have any questions concerning the revised promissory notes, please contact the Federal Student Information Center at 1-800-333-INFO.

Sincerely,

Ernest C. Canellos
Acting Deputy Assistant Secretary
for Student Financial Assistance

Enclosures

Promissory Note—Perkins Loan

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ______________________________, promise to pay to ______________________________ ____________________(hereinafter called the Institution), located at ______________________________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is [shortened under paragraph III(5), or] extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled payments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII, IX, and X performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraph VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services); in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As an volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I became totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1..................			
2..................			
3..................			
4..................			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of Borrower
1.			
2.			
3.			
4.			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.
[This note is signed as a sealed instrument.]

Signature____________________________________[(seal)].

Date____________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

Social Security Number (borrower must provide)____________________

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner____________________________________[(seal)].

Date ____________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd)

Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ______________________________________, promise to pay to______________________________ ___________________________(hereinafter called the Institution), located at______________________________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that is [shortened under paragraph III (5), or] extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act or 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent for the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None".)

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS,
AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1...................			
2...................			
3...................			
4...................			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of Borrower
1..................			
2..................			
3..................			
4..................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

I UNDERSTAND AND AGREE TO ALL THE FOREGOING TERMS AND CONDITIONS.
[This note is signed as a sealed instrument.]

Signature ____[(seal)]

Date____________________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

Social Security Number (borrower must provide) ______________________________

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner____[(seal)].

Date____________________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd.)

Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I,________________________________, promise to pay to________________________________ ____________________(hereinafter called the Institution), located at________________________________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law*. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation*. I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine months from the date this loan is made, or if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII, IX, and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayment if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) The Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act, or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1.................			
2.................			
3.................			
4.................			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of Borrower
1....................			
2....................			
3....................			
4....................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.
[This note is signed as a sealed instrument.]

Signature ____[(seal)].

Date______________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

Social Security Number (borrower must provide)______________________________

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ____[(seal)].

Date______________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I,______________________________________,promise to pay to________________________________ ______________________(hereinafter called the Institution), located at______________________________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching or military service described in Articles VII, VIII, and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change In Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS,
AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1.....................			
2.....................			
3.....................			
4.....................			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of Borrower
1...................			
2...................			
3...................			
4...................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU HAVE READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.
[This note is signed as a sealed instrument.]

Signature____[(seal)].

Date______________________________, 19_____.

Permanent Address (Street or Box Number, City, State, and Zip Code).

____

Social Security Number (borrower must provide)__________________________________

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding, obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner____[(seal)].

Date______________________________, 19_____.

Permanent Address (Street of Box Number, City, State, and Zip Code).

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

PERKINS-3:

Illustrative Example of Request for Deferment of Repayment

REQUEST FOR DEFERMENT OF REPAYMENT

PART I — TO BE COMPLETED BY BORROWER

ACCOUNT NUMBER — — — —	NAME AND ADDRESS OF LENDING INSTITUTION (INCLUDE ZIP CODE)
NAME (LAST, FIRST, INITIAL)	

ADDRESS (STREET, CITY, STATE & ZIP CODE)

THIS IS TO CERTIFY THAT I HAVE BEEN: (CHECK APPROPRIATE ITEM)

☐ AT LEAST A HALF-TIME STUDENT
☐ ACTIVE DUTY IN ARMED FORCES
☐ PEACE CORPS
☐ VISTA
☐ OFFICER IN PUBLIC HEALTH SERVICE
☐ VOLUNTEER IN TAX-EXEMPT ORGANIZATION
☐ TEMPORARILY DISABLED
☐ INTERNSHIP

FROM (MONTH & YEAR)	TO (MONTH & YEAR)

I claim exemption from payment of principal and accrual of interest on my loan during the period indicated above. I agree to notify the lending institution immediately upon termination of my claimed status. Deferments are not given beyond the date of certification. Therefore:

☐ CHECK HERE IF YOU EXPECT TO BE ELIGIBLE FOR DEFERMENT AGAIN NEXT YEAR.
IF SO, THROUGH WHAT DATE ____________
MONTH YEAR

SIGNATURE OF BORROWER	DATE

PART II — TO BE COMPLETED BY CERTIFYING AUTHORITY

I CERTIFY THAT THE INFORMATION STATED IN **PART I** ABOVE IS TRUE AND CORRECT. PERSON NAMED ABOVE WAS

☐ ENROLLED AS AT LEAST A HALF-TIME STUDENT
☐ VOLUNTEER IN TAX-EXEMPT ORGANIZATION
☐ IN PEACE CORPS VOLUNTEER SERVICE
☐ AN OFFICER IN PUBLIC HEALTH SERVICE
☐ IN ARMED FORCES
☐ TEMPORARILY DISABLED
☐ IN VOLUNTEERS IN SERVICE TO AMERICA (VISTA)
☐ IN AN INTERNSHIP

SIGNATURE OF CERTIFYING OFFICIAL	DATE
NAME OF ORGANIZATION	OFFICIAL SEAL OR STAMP (If none, include signed letter of Certification)
ADDRESS (CITY, STATE, & ZIP CODE)	

PART III — TO BE COMPLETED BY LENDING INSTITUTION

LENDING INSTITUTION ACTION		
☐ APPROVED	DATE	POSTPONEMENT ENDING
☐ DISAPPROVED	NAME OF OFFICIAL	NEXT PAYMENT DUE

RETURN TO:

1. Complete and Submit in two copies.

PERKINS-4: Illustrative Example of Physician's Affidavit of Temporary Total Disability

Physician's Affidavit of Temporary Total Disability

Under the Carl D. Perkins/National Direct Student Loan program, administrated by the United States Department of Education, a borrower is entitled to have periodic installment payments of principal deferred for up to three years during which the borrower is temporarily totally disabled, or during which the borrower is unable to secure employment because he or she is caring for a spouse who is temporarily totally disabled. To qualify for this deferment, a borrower must provide the lender who issued the loan with an affidavit of a qualified physician, certifying the borrower's or the spouse's disability.

The following affidavits are for the purpose of establishing the eligibility of a Perkins/National Direct Student Loan borrower to obtain a deferment for temporary total disability and are in a form acceptable to the United States Department of Education

1. If the patient is a borrower of a Perkins/Direct Student Loan: I certify that, in my best professional judgment, my patient ____________________ is temporarily totally disabled as a result of illness or injury and is unable either to attend school or to be gainfully employed. The nature of this patient's illness is ____________________. The patient's temporary total disability began on ____________________. I anticipate that this patient will recover from this disability to the extent that he or she will be able either to attend school or to be gainfully employed by ____________________.

I am legally authorized to practice medicine/osteopathy in the State of ____________________. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

____ __________

Signature of Physician (M.D. or D.O.) Date

---

2. If the patient is the spouse of a Perkins/Direct Student Loan borrower: I certify that, in my best professional judgment, my patient, ____________________, who is the spouse of ____________________, is temporarily totally disabled as a result of an illness or injury and is unable to be gainfully employed. In addition, this patient requires continuous nursing or other similar services. The nature of this patient's illness is ____________________. This patient's temporary total disability began on ____________________. I anticipate that this patient will recover from this disability to the extent that he or she will be able to be

gainfully employed and will no longer require continuous nursing or other similar service by ____________________.

I am legally authorized to practice medicine/osteopathy in the State of ____________________. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

____ __________

Signature of Physician (M.D. or D.O.) Date

PERKINS-5:

Illustrative Example of Request for Partial Cancellation of Loan Due to Teaching Service

REQUEST FOR PARTIAL CANCELLATION OF LOAN DUE TO TEACHING SERVICE

PART I — GENERAL AND CERTIFICATION OF TEACHING INFORMATION (TO BE COMPLETED BY BORROWER)

ACCOUNT NUMBER — — — —	NAME AND ADDRESS OF LENDING INSTITUTION (City, State, and Zip Code)
NAME (LAST, FIRST, INITIAL)	
ADDRESS (STREET, CITY, STATE, ZIP CODE)	
NAME OF SCHOOL, NOT SCHOOL DISTRICT WHERE EMPLOYED	DESCRIPTION OF EXACT DUTIES (Attach sheet if necessary)

ACADEMIC YEAR → STARTING	MONTH	DAY	YEAR	ACADEMIC YEAR → TERMINATING	MONTH	DAY	YEAR

CHECK APPROPRIATE BOXES FOR FULL-TIME TEACHER CANCELLATION ENTITLEMENT BELOW

Loans Granted Prior to 7 1 72	Elementary School	Secondary School	Institution of Higher Education	10 Per Centum Rate	15 Per Centum Rate by Reason of Elementary and Secondary Schools Only	
Public					High Concentration of Students From Low Income Families	
Other Nonprofit					Teacher of the Handicapped	

Loans Granted After 6 30 72	Elementary School	Secondary School		
High Concentration of Students From Low Income Families			Staff Member of Head Start	
Teacher of the Handicapped				

I DECLARE that I was employed as a full-time teacher in a public or other nonprofit elementary or secondary school or institution of higher education in a state, or in an elementary or secondary school overseas of the Armed Forces of the United States, or as a full-time staff member of the Head Start Program for a complete academic year or its equivalent as stated. I request cancellation of the appropriate amount of principal and interest for such service in accordance with my entitlement under the law and in accordance with regulations and instructions issued by the U.S. Commissioner of Education.

☐ I DO INTEND TO TEACH DURING THE NEXT ACADEMIC YEAR ____________ TO ____________

☐ I DO NOT INTEND TO TEACH DURING THE NEXT ACADEMIC YEAR

SIGNATURE OF BORROWER	DATE

PART II — CERTIFICATION BY OFFICIAL OF SCHOOL IN WHICH BORROWER TAUGHT

I CERTIFY that the borrower's declaration as to his employment, the completion of his service, and the description of his duties is true and correct.

SCHOOL SYSTEM, DISTRICT or INSTITUTION	SIGNATURE of AUTHORIZED OFFICIAL	OFFICIAL SEAL or STAMP (If none, include signed letter of Certification)
ADDRESS (City, County, State, Zip Code)	TITLE	
	DATE	

PART III — COMPLETED BY LENDING INSTITUTION

For Loans Received Prior To July 1, 1972	☐ Approved at 10 per centum rate		☐ Approved at 15 per centum rate	
	Loan Principal Cancelled $	Interest Cancelled $	Total Amount Cancelled $	Balance Due $
For Loans Received After July 1, 1972	☐ Approved at 15 per centum rate 1st & 2nd year	☐ Approved at 20 per centum rate 3rd & 4th year		☐ Approved at 30 per centum rate 5th year
	Loan Principal Cancelled $	Interest Cancelled $	Total Amount Cancelled $	Balance Due $

☐ Disapproved indicate reason here

Months ____________

Int To ____________

Year ____________

Signature of Approving Official	Title	Date

Return forms to:

PERKINS-6:

Perkins Loan Program Assignment Form

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0091, Washington, D.C. 20503.	**Form Approved: 05/22/89** **OMB Number 1840-0091** **Approval Expires: 08/31/92**

Perkins Loan Program

(Formerly National Direct/Defense Student Loan)

Assignment Form

The borrower named below was issued a Perkins Loan or a National Direct Loan, authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended, or a National Defense Student Loan authorized under Title II of the National Defense Education Act. This loan is now in default despite completion of due diligence on the part of the institution. Therefore, the institution is assigning all rights and title under such note or agreement to the United States Department of Education, without recompense as provided under Section 463(a)(5), 20 U.S.C. 1087cc.

SECTION A - INSTITUTIONAL INFORMATION

1. Full Institution Name		5. Serial Number
2 Full Street Address of Institution		6. Entity Number (EIN)
3. City	4. State	7. Zip Code
8. Typed Name of Auth. Official	9. Certification Date (MM/DD/YY)	10. Signature of Auth. Official
11. Typed Title of Auth. Official	12. Telephone Number (Area Code)	13. Alternate Contact

WARNING: I understand that if I knowingly make a false statement or misrepresentation on this form in the course of assigning this defaulted loan to the United States Department of Education, I am subject to a fine of up to $10,000 or imprisonment of up to five (5) years or both under privisions of the United States Criminal Code, 18 U.S.C. 1001.

SECTION B - BORROWER INFORMATION

14. Current or Last Known Name (Last, First, MI)		15. Previous Name(s) (Maiden, Legal Change, etc.)
16. Social Security Number	17. Date of Birth (MM/DD/YY)	18. Departure Date (MM/DD/YY)
19. Current or Last Known Permanent Address (Number and Street)		22. Telephone Number (Area Code)
20. City	21. State	23. Zip Code
24. Previous Address(es) of Borrower (Number and Street)		27. Telephone Number (Area Code)
25. City	26. State	28. Zip Code
29. Name of Cosigner of Loan (Last, First, MI)		
30. Current or Last Known Permanent Address of Cosigner (Number & Street)		33. Telephone Number (Area Code)
31. City	32. State	34. Zip Code

SECTION C - LOAN INFORMATION: HISTORICAL

Type of Loan (Check Appropriate Space) 35. Perkins____ 36. Direct____ 37. Defense____	38. Applicable interest Rate on this Loan ____%
39. Date of Last Advance (MM/DD/YY) 40. Date Last Grace Period Ended (MM/DD/YY)	41. Date of Default (MM/DD/YY)

Was this loan ACCELERATED? (Check Appropriate Space)
If YES, provide date of acceleration and attach documented proof. If NO, provide date this loan became fully mature (due-in)
42. YES____ 43. NO ____ 44. (MM/DD/YY)________________

Was this loan LITIGATED? (Check Appropriate Space) If YES, provide date and attach judgement.

45. YES ____ 46. NO ____ 47. (MM/DD/YY)________________

Provide date this loan was reported to the Credit Bureau and attach documented proof.

48. (MM/DD/YY)________________

Reason this loan has been determined uncollectable. (Check Appropriate Space)

49. Hardship____ 50. Incarceration ____ 51. Unemployment ____ 52. Refusal to Pay ____
53. Address Unknown ____ 54. Other (Please Explain)

SECTION D - LOAN INFORMATION: FINANCIAL

55. Principal Amount Loaned $________	56. Principal Amount Refunded $________	57. Principal Amount Repaid $________
58. Principal Amount Canceled $________	59. Principal Amount Outstanding (55 less 56, 57, & 58) $________	60. Penalty/Late Charge $________
61. Interest Repaid $________	62. Interest Canceled $________	63. Interest Due $________
64. Collection Costs $________	65. Total Amount Outstanding (Sum of Items 59, 60, 63, and 64) $________	

SECTION E - CANCELLATION AND DEFERMENT INFORMATION

Cancellations Granted for this loan Type	Percentage Rate	Principal Canceled	Interest Canceled	For Services Performed From (MM/DD/YY)	To (MM/DD/YY)
66.	67.	68.	69.	70.	71.
72.	73.	74.	75.	76.	77.
78.	79.	80.	81.	82.	83.
84.	85.	86.	87.	88.	89.
90.	91.	92.	93.	94.	95.

Deferments Granted for this Loan Type	Start Date (MM/DD/YY)	End Date (MM/DD/YY)
96.	97.	98.
99.	100.	101.
102.	103.	104.

HHS-1: Illustrative Example of Health Professions and Nursing Loans Statement of Rights and Responsibilities

A Health Professions or Nursing Student Loan is a serious legal obligation. Therefore, it is extremely important that you understand your rights and responsibilities and you agree to honor them.

1. I understand that I must, without exception, report any of the following changes to ____________ if:

a. I withdraw from school
b. my address, or my parents' address, changes
c. I drop below full-time status (half-time for nursing students)
d. my name should change (for example, because of marriage)
e. I transfer to another school
f. I join the military service or Peace Corps

2. I understand that when I graduate or withdraw from ____________, I must arrange for an exit interview by calling ____________.

3. I understand that my first ____________ payment will be due ______ months from the time I cease to be a full-time (half-time nursing) student.

4. I understand that my minimum ____________ payment will be at least $ ____________. It may be more if the amount borrowed is sufficient to require larger payments.

5. I understand that the ANNUAL PERCENTAGE RATE shown below will be charged on the unpaid balance and that it will begin to accrue 12 months (9 months for nursing) after I cease to be enrolled as a full-time student (half-time for nursing).

6. I understand that cancellation may be granted for practice in certain areas; for special conditions according to the terms shown in my loan note; and in the event of death or permanent total disability. I also understand the school must be informed of such a status.

7. I understand that if I enter the military service or Peace Corps, or pursue advanced professional training, I may request that the payments on my loan be deferred.

8. I understand that if I fail to repay my loan as agreed, the total loan may become due and payable immediately and legal action could be taken against me.

9. I understand that I must promptly answer any communication regarding my loan.

10. I understand that if I cannot make a payment on time, I must contact __________.

11. I authorize __________ to contact any school which I may attend to obtain information concerning my student status, my year of study, my dates of attendance, graduation, or withdrawal, my transfer to another school, or my current address.

12. I authorize __________ to report this loan to credit bureaus.

Annual Percentage Rate The cost of your credit as a yearly rate.	Amount Financed The amount of credit provided to you.	Late Charges: If your payment is 60 days late, you may be charged up to 6 percent of the monthly payment.
Prior to Repayment: ________	$ __________	Prepayment: If you pay off early, you will not have to pay a penalty.
During Repayment: ________		See the promissory note for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

I understand I have a right to request an itemization of the amount financed. I do ______/do not ______ request an itemization.

I have received a copy of this statement.

__________ __________________________ __________

Date Signature of student Student number

HHS-2:

HPSL Promissory Note

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Bureau of Health Professions

FORM APPROVED
OMB No: 0915-0074
Exp. Date: 10/31/89

HEALTH PROFESSIONS STUDENT LOAN PROGRAM
PROMISSORY NOTE
FOR LOANS MADE ON OR AFTER

November 4, 1988

I, ______________________________, hereinafter called the Borrower, promise to pay

to ______________________________, hereinafter called the Institution located
(Name of Institution)

at ______________________________, the sum of such amounts as may from time to time be advanced
(City and State)

to me and endorsed in the Schedule of Advances below with interest at the rate of *Five (5) percent per annum* together with *all attorney's fees, collection agent costs, and other related costs* and charges for the collection of any amount not paid when in default according to the terms of this note.

SCHEDULE OF ADVANCES

NUMBER	AMOUNT ADVANCED	TOTAL TO DATE	DATE	SIGNATURE OF BORROWER
1				
2				
3				
4				
5				
6				
7				
8				

The Borrower and the Institution further understand and agree that:

1. *Consolidation:* If the Institution makes more than one loan with the same repayment terms to the Borrower under the Health Professions Student Loan program, the sum of the amounts advanced to the Borrower shall be consolidated for purposes of repayment. Each payment made by the Borrower to the Institution shall be applied first to interest which has accrued on the unpaid principal balance and then to the principal sum of the total loan.

2. *Repayment:*
    a. Repayment shall be made in equal or graduated periodic installments over a *ten-year repayment period*, except that the Institution may require repayment to be made in an amount equal to *not less than $15 per month*. The ten-year repayment period begins *one year* after the Borrower ceases to be a full-time student at a school eligible to participate in the Health Professions Student Loan program. Periods of authorized deferment are not included as part of the ten-year repayment period.
    b. The terms and conditions of repayment shall be set forth in a separate repayment schedule which is approved by the Institution and agreed to by the Borrower. Payments under the repayment schedule shall be made no less often than quarterly, except that if the Borrower is more than 60 days past due on a payment, the remaining balance of the loan shall be repaid on a monthly basis.

3. *Interest:* Interest shall accrue from the beginning of the repayment period.

4. *Deferment:* Periodic installments of principal and interest need not be paid, and interest shall not accrue, while the Borrower: (a) serves on active duty as a member of a uniformed service of the United States, for up to *three years*; (b) serves as a volunteer under the Peace Corps Act, for up to *three years*; (c) pursues advanced professional training, including internships and residencies; (d) pursues a full-time course of study at a health professions school eligible for participation in the Health Professions Student Loan program; (e) leaves the Institution, with the intent to return to the Institution as a full-time student, to engage in a full-time educational activity which is directly related to the health profession for which the Borrower is preparing, as determined by the Secretary of Health and Human Services (the Secretary), for up to *two years*; and (f) participates in a fellowship training program or a full-time educational activity which is directly related to the health profession for which the Borrower prepared at the Institution, and is engaged in by the Borrower within 12 months after the completion of the Borrower's participation in advanced professional training described in 4.(c) above or prior to the completion of the Borrower's participation in such training, for up to *two years*.
5. *Prepayment:* The Borrower may, at his or her option and without penalty, prepay all or any part of the principal and accrued interest at any time.
6. *Exit Interview:* The Borrower agrees to attend an exit interview prior to completing or terminating full-time student status at the Institution.
7. *Default:* If the Borrower fails to make an installment payment when due or fails to comply with any other term of this Promissory Note, the loan will be considered in default.
8. *Late Charge:* The Institution *shall* assess a late penalty charge for failure of the Borrower to pay all or any part of an installment, or for failure to file satisfactory evidence of entitlement to deferment, if so entitled, at a rate, not to exceed an amount equal to 6 percent of the amount of such installment, on loans more than 60 days past due.
9. *Acceleration:* If the Borrower fails to make a scheduled repayment or fails to comply with any other term of this Promissory Note, the entire unpaid balance of the loan, including interest due and accrued and any applicable penalty charges, will, at the option of the Institution, become immediately due and payable.
10. *Credit Bureaus:* The Institution may disclose the Borrower's loan, and any other relevant information, to credit bureaus. If the Borrower is more than 120 days past due in making a scheduled repayment, the Institution will disclose the Borrower's delinquent status, and any other relevant information, to credit bureaus.
11. *Collection Agents, Litigation, and Withholding of Services*: If the Borrower fails to make a scheduled repayment, or fails to comply with any other term of this Promissory Note, the Institution may: (a) refer the Borrower's loan to a collection agent for further collection efforts; (b) initiate legal proceedings against the Borrower; (c) withhold Institutional services, such as transcripts and letters of recommendation, from the Borrower; (d) refer the Borrower's loan to the Secretary for collection assistance, including offset of Federal salaries; and (e) obtain the Borrower's address from the Internal Revenue Service, through the Secretary, if the Institution has no current address for the Borrower.
12. *Death or Disability:* In the event of the Borrower's total and permanent disability or death, the unpaid indebtedness remaining on the Note shall be canceled. Subject to the regulations of the Secretary, the Institution may assess a charge on the Borrower's loan to cover the costs of insuring against death or disability cancellations.
13. *Repayment by the Secretary:*
    a. At the option of the Secretary, the Borrower and the Secretary may enter into a special contract to have this loan partially repaid by the Secretary for service by the Borrower for at least two years in a health manpower shortage area, as identified by the Secretary. *This contract will be offered only if Federal funds are available for this purpose.*
    b. *Subject to the availability of funds*, and upon application by the Borrower, the Secretary may repay without liability to the Borrower all or any part of the Borrower's loan under this Note which is outstanding on the date the Secretary determines, according to applicable Federal regulations, that the Borrower: (1) failed to complete the course of study leading to his/her first professional degree for which such loan was made; (2) is in exceptionally needy circumstances; (3) is from a low-income or disadvantaged family; and (4) has not resumed, or cannot reasonably be expected to resume the study of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, pharmacy, or podiatry within a period of two years following the date upon which the Borrower ceased to pursue the course of study for which the loan was made.
14. *General:* The Borrower will *promptly* inform the Institution of any change in name or address after he or she ceases to be a full-time student at the Institution. The terms of this Note shall be construed according to the Federal statute (42 U.S.C. 294m—294q) and regulations (42 CFR section 57.201 et seq.) governing the administration of the Health Professions Student Loan program, copies of which shall be kept by the Institution.

In Witness Hereof, My Hand and Seal

____________________ *(DATE)*

________________________________ *(SEAL)* *(SIGNATURE OF BORROWER)*

NOTICE: The Institution must require security or endorsement if the Borrower is a minor and if, under the applicable State law, the Note signed by him or her would not create a binding obligation. The Institution may not require security or endorsement in any other circumstances. The Institution shall supply a copy of this Note to the Borrower.

WARNING: Any person who knowingly makes a false statement or misrepresentation in obtaining these funds is subject to penalties which may include fines and imprisonment under Federal statute.

HRSA-516 (BACK)
Rev. 11/88

Dk: 12

HHS-3:

NSL Promissory Note

OMB No. 0915-0073
Exp Date 10/31/89

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Bureau of Health Professions

NURSING STUDENT LOAN PROGRAM
PROMISSORY NOTE
FOR LOANS MADE ON OR AFTER

November 4, 1988

I, ______________________________, hereinafter called the Borrower, promise to pay

to ______________________________, hereinafter called the Institution located
(Name of Institution)

at ______________________________, the sum of such amounts as may from time to time be advanced
(City and State)

to me and endorsed in the Schedule of Advances below with interest at the rate of *Five (5) percent per annum together with all attorney's fees, collection agent costs, and other related costs* and charges for the collection of any amount not paid when in default according to the terms of this note.

SCHEDULE OF ADVANCES

NUMBER	AMOUNT ADVANCED	TOTAL TO DATE	DATE	SIGNATURE OF BORROWER
1				
2				
3				
4				
5				
6				
7				
8				

The Borrower and the Institution further understand and agree that:

1. *Consolidation:* If the Institution makes more than one loan to the Borrower under the Nursing Student Loan program, with the same repayment terms, the sum of the amounts advanced to the Borrower shall be consolidated for purposes of repayment. Each payment made by the Borrower to the Institution shall be applied first to interest which has accrued on the unpaid principal balance and then to the principal sum of the total loan.

2. *Repayment:*
   a. Repayment shall be made in equal or graduated periodic installments over a *ten-year repayment period*, except that the Institution may require repayment to be made in an amount equal to *not less than $15 per month*. The ten-year repayment period begins *nine months* after the Borrower ceases to be a full-time or half-time student at a school eligible to participate in the Nursing Student Loan program. Periods of authorized deferment are not included as part of the ten-year repayment period.
   b. The terms and conditions of repayment shall be set forth in a separate repayment schedule which is approved by the Institution and agreed to by the Borrower. Payments under the repayment schedule shall be made no less often than quarterly, except that if the Borrower is more than 60 days past due on a payment, the remaining balance of the loan shall be repaid on a monthly basis.

3. *Interest:* Interest shall accrue from the beginning of the repayment period.

4. *Deferment:* Periodic installments of principal and interest need not be paid, and interest shall not accrue, while the Borrower:
   a. serves on active duty as a member of a uniformed service of the United States, for up to *three years;*
   b. serves as a volunteer under the Peace Corps Act, for up to *three years; and*
   c. pursues, for up to ten years, a full-time or half-time course of study at a collegiate school of nursing leading to a baccalaureate degree in nursing or equivalent degree, or a graduate degree in nursing, or otherwise pursues advanced professional training in nursing or training to be a nurse anesthetist.

HRSA-515
Rev. 11/88

OVER

5. *Prepayment:* The Borrower may, at his of her option and without penalty, prepay all or any part of the principal and accrued interest at any time.

6. *Late Charge:* The Institution *shall* assess a late penalty charge for failure of the Borrower to pay all or any part of an installment, or for failure to file satisfactory evidence of entitlement to deferment, if so entitled, at a rate, not to exceed an amount equal to 6 percent of the amount of such installment, on loans more than 60 days past due.

7. *Acceleration:* If the Borrower fails to make a scheduled repayment, the entire unpaid balance of the loan, including interest due and accrued and any applicable penalty charges, will, at the option of the Institution, become immediately due and payable.

8. *Credit Bureaus:* The Institution may disclose the Borrower's loan, and any other relevant information, to credit bureaus. If the Borrower is more than 120 days past due in making a scheduled repayment, the Institution will disclose the Borrower's delinquent status, and any other relevant information, to credit bureaus.

9. *Collection Agents, Litigation, and Withholding of Services:* If the Borrower fails to make a scheduled repayment or fails to comply with any other terms of this promissory note, the Institution may refer the Borrower's loan to a collection agent for further collection efforts, initiate legal proceedings against the Borrower, and withhold institutional services, such as transcripts and letters of recommendation, from the Borrower. The Institution may obtain addresses of borrowers who have defaulted on student loans, for whom the Institution has no current mailing address, from the Internal Revenue Service, through the Secretary of Health and Human Services (the Secretary). The Institution may also refer a defaulted borrower's loan to the Secretary for collection assistance.

10. *Death or Disability:* In the event of the Borrower's total and permanent disability or death, the unpaid indebtedness remaining on the Note shall be canceled.

11. *Repayment by the Secretary of Health and Human Services:*
    a. At the option of the Secretary, the Borrower and the Secretary may enter into a special contract to have this loan partially repaid by the Secretary for service by the Borrower, as a registered nurse, for at least two years in a designated facility or area described in Section 836(h) of the Public Health Service Act. *This contract will be offered only if Federal funds are available for this purpose.*
    b. *Subject to the availability of funds,* and upon application by the Borrower, the Secretary may repay without liability to the Borrower all or any part of the Borrower's loan under this Note which is outstanding on the date the Secretary determines, according to applicable Federal regulations, that the Borrower:
        (1) failed to complete the nursing studies for which such loan was made;
        (2) is in exceptionally needy circumstances; and
        (3) has not resumed, or cannot reasonably be expected to resume the nursing studies within a period of two years following the date upon which the Borrower ceased to pursue the course of study for which the loan was made.

12. *General:* The Borrower will *promptly* inform the Institution of any change in name or address after he or she ceases to be a full-time student or half-time student at the Institution. The terms of this Note shall be construed according to the Federal statute (42 U.S.C. 297a—297i) and regulations (42 CFR section 57.301 et. seq.) governing the administration of the Nursing Student Loan program, copies of which shall be kept by the Institution.

In Witness Hereof, My Hand and Seal

______________________ *(DATE)*

______________________ *(SIGNATURE OF BORROWER)* *(SEAL)*

NOTICE A school must require security or endorsement if the Borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances. The payee shall supply a copy of this note to the Borrower.

WARNING Any person who knowingly makes a false statement or misrepresentation in obtaining these funds is subject to penalties which may include fines and imprisonment under Federal statute.

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ILP-1: Sample Donor Agreement

I. Establishment

[The name of university or college] hereby agrees to establish the ________ LOAN FUND per the terms of this agreement, to become effective on such date as the minimum funding requirements for a loan fund have been received and accepted by the [university].

II. Purpose

The purpose of this Loan Fund shall be to provide financial assistance to ________. Financial assistance is provided in the form of loans with the expectation that those students who have benefitted because of such a loan will repay the loan and extend the privilege to other students in succeeding years.

[Brief biographical information about the person for whom the Fund is named may bae included, along with a statement of the donor's purpose in establishing the Fund.]

III. Funding

This Loan Fund shall be funded with the following: [include all applicable items]

1. A cash gift of $ ______
2. A gift of securities (real property) valued at $ ______. [If the value is unknown, the property may be described.]
3. A gift of the remainder interest of a [charitable remainder trust]/[pooled income fund gift]/[charitable gift annuity] executed on ______.
4. Any other gifts or bequests that ________ or other persons may designate for this purpose.

[As an alternative option, an additional pledge may be specified: "Additional gifts that the donors intend to complete by [date], which, when added to the initial gift, total at least $ ______."]

IV. Selection

Selection of the loan recipients shall bae made by the [Dean of ________]/[Director of Financial Aid], or by his or her designee. To be eligible for a loan, a student must [restrictions such as field of study or financial need may be specified, but donors should be encouraged to make the terms as open as possible.]

V. Amount and Terms of Loans

The amount and terms of loans shall be determined by the [Dean of ________]/[Director of Financial Aid], or by his or her designee, and shall be consistent with other [university] loan programs and with [university] policies governing student loans.

VI. Administration

The [Dean of ____________]/[Director of Financial Aid], or his or her designee, shall be the administrator of this Fund. Expenditures shall be subject to the [university's] accounting procedures and guidelines.

VII. Repayment Provisions

Each borrower is expected to repay the loan and will sign a promissory note in accordance with [university] policy. The interest rate shall be the amount charged by the [university] on comparable loans, and the repaypment schedule shall be determined by the appropriate [university] office.

VIII. Amendment

This agreement may be amended by the mutual consent of the (name of university) and ____________, during his/her lifetime.

If changed circumstances should at some future time cause the continuation of this Loan Fund to be inappropriate or impractical, and the donor is either not living or not able to consent to an amendment, then the [university] may amend the terms of this agreement, provided that the Fund shall continue to bear the name of ____________ and the amended terms shall adhere as closely as possible to the donor's original intent for this Fund.

DONOR: FOR THE [NAME OF UNIVERSITY]:

______________________________ ______________________________

(Name) (Financial Aid Officer)

____

(Development Officer)

____

(Executive Officer)

Approved as to form:

______________________________ ____________

(Institution's General Counsel/Attorney) (Date)

Note: All endowment agreements must be reviewed in draft form by the Development Office before *being sent to a donor. Remember that the statement of purpose should be kept as free of restrictions as possible, especially of ideological restrictions or discriminatory language.*

Appendix B: *Selected Federal Regulations*

This appendix provides copies of selected regulatory documents discussed in this book. Student loan managers and collectors are recommended to use these materials in conjunction with the information provided in the text of this book to gain a thorough understanding of the legal requirements associated with the federal student loan programs.

The appendix includes the following final regulations:

Exhibit I **Perkins Loan Program:**

34 CFR 674 (Subpart B)—Terms of Loans

34 CFR 674 (Subpart C)—Due Diligence

34 CFR 674 (Subpart D)—Loan Cancellation

Exhibit II **Health Professions Student Loan Program:**

42 CFR 57.210—Loan Repayment and Collection

Exhibit III **Nursing Student Loan Program:**

42 CFR 57.310—Loan Repayment and Collection

Exhibit IV **Guaranteed Student Loan Programs:**

34 CFR 668 and 682 (selected provisions—Department of Education's "Default Reduction Initiative"

Exhibit V **List of Forthcoming Federal Regulations**

Exhibit I

Perkins Loan Program:

34 CFR 674 (Subpart B)—Terms of Loans

34 CFR 674 (Subpart C)—Due Diligence

34 CFR 674 (Subpart D)—Loan Cancellation

tion shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertain-

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ing to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

*(3) *Period of retention.* (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) *Manner of retention of records.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087aa-1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

Subpart B—Terms of Loans

SOURCE: 52 FR 45754, Dec. 1, 1987, unless otherwise noted.

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Ap-

pendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), or deferments (see §§ 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: U.S.C. 1087dd)

§ 674.33 Repayment.

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) *Minimum repayment rates—(1) Rounding monthly repayment amounts.* If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) *Minimum monthly repayment of Defense loans from one institution.* An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) *Minimum monthly repayment of Defense loans from more than one institution.* If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) *Minimum monthly repayment of Direct loans and Perkins loans from one Institution.* The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) *Minimum monthly repayment of Direct loans and Perkins loans from more than one institution.* If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) *Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions.* If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) *Minimum monthly repayment of loans from one institution with different interest rates.* (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) *Differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to hardship.

(2) *Low-income individual.* (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is

comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

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(Authority: 20 U.S.C. 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

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(Authority: 20 U.S.C. 425, 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under § 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

Subpart C—Due Diligence

Source: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

§ 674.41 Due diligence—general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower or any endorser.

(b) *Due diligence with regard to endorser.* If a borrower does not respond satisfactorily to the final demand letter required in § 674.43(c)(2), an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser using the steps described in this subpart.

(c) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.42 Contact with the borrower.

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a) (1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) *Contact with the borrower during the initial and post deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (loans made before October 1, 1980, and loans made for periods of enrollment beginning after June 30, 1987 to borrowers with no outstanding balance on any Defense, Direct or Perkins loan made to the borrower prior to July 1, 1987, the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Approved by the Office of Management and Budget under control number 1840-0581)

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use the following billing procedures:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment;

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to § 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the later charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) Use of the Department of Education's skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) Litigation to collect the borrower's account is barred under the applicable statute of limitations;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the defaulted account to a credit bureau, unless specifically prohibited by State law; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus. An institution may select a bureau which serves—

(i) The areas from which the major portion of its students was drawn; or

(ii) The areas in which all or a major portion of its alumni/ae now reside.

(2) An institution shall report, according to the reporting procedures of the bureau, any changes in account status to the bureau to which it reported the defaulted account, and shall respond promptly and accurately to any inquiry from any bureau regarding the information reported on the loan account.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either—

(i) Litigate; or

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall, unless specifically prohibited by State law, refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until recovery in litigation to collect the account would be barred under the applicable statute of limitations.

(e)(1) Subject to § 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 674.44, 674.46, 674. 48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 424, 1087cc, 1091a)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually, until litigation to collect the account is barred under the applicable statute of limitations, whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Perkins, National Direct and National Defense Student Loans held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the oustanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in §§ 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to § 674.43.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to §§ 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: Collection costs.* Before filing suit on a loan, the institution may waive that percentage of the collection costs applicable to the amount then past due on the loan equal to the percentage of that past-due balance that the borrower pays within 30 days of the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following costs not paid by the borrower, including amounts waived under paragraph (d) of this section:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 33⅓ percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 50 percent of the amount of principal, interest and late charges collected.

(5) For litigation costs, including attorney's fees, court costs and other related costs, an amount which does not exceed—

(i) Actual costs incurred in taking specific actions in bankruptcy proceedings required or authorized under § 674.49;

(ii) That portion of costs of other actions in bankruptcy proceedings which, together with costs authorized and incurred under paragraph (e)(5)(i) of this section, do not exceed one-third of the total amount of the judgment obtained on the loan; and

(iii) In all other cases, 50 percent of the amount of the judgment obtained against the borrower.

(6) If a collection firm performs or contracts for the performance of both collection and litigation activities on a defaulted loan, an amount for both of the functions that does not exceed 33⅓ percent of the amount of principal, interest and late charges collected by a first collection effort as required in § 674.45(a), or 50 percent for a second collection effort as required in § 674.45(c)(1).

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 674.19.

(g) *Write-offs.* (1) An institution may write off an account if—

(i)(A) It carries out the procedures in §§ 674.43, 674.44 and 674.45; and

(B) The total amount owing on a borrower's loan account held by that institution, including outstanding principal, accrued interest, late charges and collection costs on all of the borrower's Perkins, Direct and Defense Student Loans is $200.00 or less; or (ii)(A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser.

(2) An institution which writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately upon receipt in an institutional trust account; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower promptly in an institutional trust account, after deducting its fees, if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

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(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(1) Against the borrower; and

(2) If the borrower has filed for relief under Chapter 12 or 13 of the Bankruptcy Code, against any endorser.

(b) *Proof of claim.* The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) *Borrower's request for determination of dischargeability.* (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under Chapter 7, 11, or 12 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available informa-

tion, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under Subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than five years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume bill and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, or 11 U.S.C. 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii) (A) The loan entered the repayment period more than five years, excluding periods of deferment, before the filing of the petition, and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) after completion of a repayment plan which made no provisions with regard to either—

(i) The loan obligation; or

(ii) Unsecured claims in general.

(g) *Resumption of collection from the endorser.* The institution shall resume billing and collection action against an endorser of a borrower who has filed for relief under Chapter 12 or 13 of the Code after the borrower's case has been completed or dismissed, or the stay applicable to such action has been lifted.

(h) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan on which there is no endorser if it receives—

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than 5 years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed;

(ii) A discharge order, other than an order under 11 U.S.C. 1238(b), in a case brought under Chapter 13 of the Code; or

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(3) An institution may write off a loan on which there is an endorser only after it has exhausted the procedures in this subpart with regard to the endorser.

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(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in § 674.45(a) and litigation, if required under § 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The total amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges, is greater than $200.00; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in

§ 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferred and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, biling, collection or litigtion services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) If the institution has a default rate as calculated under § 674.2 greater than 7.5 percent as of June 30 of the second year preceding the submission period, documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

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(Authority: 20 U.S.C. 424, 1087cc)

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Subpart D—Loan Cancellation

SOURCE: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Chapter I children:* Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;
(2) Hard of hearing;
(3) Deaf;
(4) Speech and language impaired;
(5) Visually handicapped;
(6) Seriously emotionally disturbed;
(7) Orthopedically impaired;
(8) Specific learning disabled; or
(9) Otherwise health impaired.

(f) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1))

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425, 1087ee)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.53 Teacher cancellation—Direct and Perkins loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs

(BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1067ee)

§ 674.54 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under

contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3))

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425)

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee)

§ 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee)

§ 674.58 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425 and 1087dd and sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

§ 674.60 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

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$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

APPENDIX A TO PART 674—PROMISSORY NOTE—PERKINS LOAN

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1.......			
2.......			
3.......			
4.......			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	signature of borrower
1....................................			
2....................................			
3....................................			
4....................................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code).

———————————————————————

Social Security Number (borrower must provide).———

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner —— [(seal)].
Date —— 19—.

____

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

[46 FR 5241, Jan. 19, 1981]

APPENDIX B TO PART 674—PROMISSORY NOTE—DIRECT LOAN

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, —— promise to pay to —— (hereinafter called the Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where nec-

Exhibit II

Health Professions Student Loan Program:

42 CFR 57.210—Loan Repayment and Collection

retary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self or other family members; and

(2) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis. The school must document the criteria used for determining these costs.

(c) *Selection of medical and osteopathic student applicants.* In addition to the factors in § 57.206(b), the school must select medical and osteopathic students graduating after June 30, 1979, based on the order of greatest need, taking into consideration the other resources available to the student through the school. For purposes of establishing priority for selecting medical and osteopathic student applicants to receive health professions student loans, summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will be considered as financial resources.

(d) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application. To comply with this requirement, a school may require that a student provide, for example: Photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; or other documentation that the school considers necessary to help assure that information on the loan application is correct.

[44 FR 32698, June 7, 1979, as amended at 48 FR 25069, June 3, 1983; 49 FR 38112, Sept. 27, 1984; 52 FR 20987, June 3, 1987; 53 FR 46549, Nov. 17, 1988]

§ 57.207 Maximum amount of health professions student loans.

The total of the health professions student loans made from the fund to any student for a school year may not exceed $2,500 and the cost of tuition. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month school year may be proportionately increased.

§ 57.208 Health professions student loan promissory note and disclosure requirements.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 9 percent per year.

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

(3) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(c) *Disclosure requirements.* (1) For any loan made after June 30, 1986, the school shall, at the time the loan is made, provide the following loan information to the student:

(i) The yearly and cumulative maximum amounts that may be borrowed by the student;

(ii) The terms which repayment of the loan will begin;

(iii) The maximum number of years in which the loan must be repaid;

(iv) The interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(v) The amount of any other fees charged to the borrower by the lender;

(vi) Any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(vii) A definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(viii) To the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(ix) A description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to:

(A) Officers, employees, or agents of the Department of Health and Human Services,

(B) Officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or

(C) Any other person involved in the collection of a loan under this subpart.

(2) For any loan made after June 30, 1986, the school shall, prior to the borrower's completion or termination of studies at the school, provide the following loan information to the student:

(i) Each amount borrowed by the student under this subpart;

(ii) The total amount borrowed by the student under this subpart; and

(iii) A schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(3) In addition to the requirements set forth in paragraphs (c)(1) and (c)(2) of this section, the school must comply with the applicable requirements of Truth in Lending Regulation Z (12 CFR Part 226).

(Approved by the Office of Management and Budget under control number 0915-0094)

[44 FR 29055, May 18, 1979, as amended at 47 FR 38325, Aug. 31, 1982; 48 FR 25069, June 3, 1983; 50 FR 34420, Aug. 23, 1985; 52 FR 20987, June 3, 1987]

§ 57.209 Payment of health professions student loans.

(a) Health professions student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time student.

§ 57.210 Repayment and collection of health professions student loans.

(a) Each health professions student loan, including accrued interests, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment of a loan must begin one year after the student ceases to be a full-time student.

(1) If a borrower reenters the same or another school as a full-time student within the 1-year period, the date upon which interest will accrue and the repayment period will begin will be determined by the date on which the student last ceases to be a full-time student at that school.

(2) The following periods will be excluded from the 10-year repayment period:

(i) All periods for up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or the U.S. Public Health Service Corps;

(ii) All periods for up to a total of 3 years of service as a volunteer under the Peace Corps Act;

(iii) All periods of advanced professional training including internships and residencies, except as specified in paragraph (a)(2)(v) of this section;

(iv) A period not in excess of 2 years during which a borrower who is a full-time student in a health professions school leaves the school, with the intent to return to such school as a full-time student, to engage in a full-time educational activity which is directly related to the health profession for which the individual is preparing. To qualify for such deferment, the full-time educational activity must be one which:

(A) Is part of a joint-degree program or a formal program of joint study in conjunction with the health profession for which the borrower is preparing at the school; or

(B) Is an activity which will enhance the borrower's knowledge and skills in the health profession for which the borrower is preparing at the school, as determined by the school.

The borrower must request such deferment from the school in which he or she is enrolled no later than 60 days prior to leaving such school to engage in the full-time educational activity. The school must then determine, no later than 30 days prior to the borrower's leaving such school, whether the borrower qualifies for such deferment. A borrower who qualifies for this type of deferment receives the grace period upon completion or termination of his or her studies leading to the first professional degree in the health discipline being pursued. If the borrower fails to return to school, the school retroactively must begin the borrower's grace period based on the date the borrower terminated his or her studies at the school, and must begin the repayment period immediately following the end of the grace period; and

(v) A period not in excess of 2 years during which a borrower who is a graduate of a health professions school participates in:

(A) A fellowship training program which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of such borrower's participation in such training. To qualify for such deferment, the fellowship training program must be one which:

(*1*) Is a full-time activity in research or research training or in health care policy; and

(*2*) Is a formally established fellowship program which was not created for a specific individual; or

(B) A full-time educational activity which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of the borrower's participation in such training. To qualify for such deferment, the full-time educational activity must be one which:

(*1*) Is part of a joint-degree program in conjunction with the health profession for which the borrower prepared at the school; or

(*2*) Is required for licensure, registration, or certification in the health profession for which the borrower received the HPSL loan; or

(*3*) Is a full-time educational program in public health, health administration, or a health care discipline directly related to the health profession for which the borrower received the loan.

(3) To receive a deferment, a borrower must, no later than 30 days prior to the onset of the activity (or no later than 30 days prior to the due date of the first payment if the borrower begins the activity during the grace period), and annually thereafter, provide the lending school with evidence of his or her status in the deferrable activity, and evidence that verifies deferment eligibility of the activity. This evidence must include certification by the Program Director or other authorized official that the borrower's activity meets the deferment requirements. The borrower must also notify the

school upon completion or termination of the activity. It is the responsibility of the borrower to provide the lending school with all required information or other information regarding the requested deferment. The school may deny a request for deferment if it is not filed in accordance with the requirements of this section.

(4) Subject to the provisions of paragraph (b)(3) of this section, a borrower must establish a repayment schedule with the school providing for payments not less often than quarterly. Any borrower whose repayment is delinquent more than 60 days must establish a monthly repayment schedule with the school. However, a borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(5) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

(b)(1) Each school at which a fund is established must exercise due diligence in the collection of health professions student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing HPSL funds in an academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with HPSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirements of this subparagraph may be met by correspondence, if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with HPSL funds, and update the personal information collected prior to disbursing HPSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(2) *Late charge.* (i) For any health professions student loan made after June 30, 1969, but prior to October 22, 1985, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment under section 741(c) of the Act, or cancellation or repayment under section 741(f) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(ii) For any health professions student loan made on or after October 22, 1985, the school shall assess a charge for failure of the borrower to pay all or any part of an installment when the loan is more than 60 days past due and, in the case of a borrower who is entitled to deferment under section 741(c) of the Act, for any failure to file satisfactory evidence of the entitlement within 60 days of the date payment would otherwise be due. No charge may be made if the loan is less than 61 days past due. The amount of this charge may not exceed an amount equal to 6 percent of the amount due at the time the charge is calculated. The school may elect to add the amount of this charge to the principal amount of the loan as of the day on which the charge is calculated, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any health professions student loan made after June 30, 1969, the school may require the borrower to make payments of at least $15 per month on all outstanding health professions student loans during the repayment period.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(5) *Disclosure of taxpayer identity information.* Upon written request by the Secretary, the Secretary of the Internal Revenue Service (IRS) may disclose the address of any taxpayer who has defaulted on a health professions student loan, for use only by officers, employees, or agents of the Department, to locate the defaulted borrower to collect the loan. Any such mailing address may be disclosed by the Secretary to any school from which the defaulted borrower received a health professions student loan, for use only by officers, employees, or agents of the school whose duties relate to the collection of health professions student loan funds, to locate the defaulted borrower to collect the loan. Any school which requests and obtains this address information must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

(Approved by the Office of Management and Budget under control numbers 0915-0094 and 0915-0111)

[44 FR 29055, May 18, 1979, as amended at 48 FR 25069, June 3, 1983; 49 FR 38112, Sept. 27, 1983; 50 FR 34420, Aug. 23, 1985; 52 FR 20988, June 3, 1987; 53 FR 6092, Feb. 29, 1988]

§ 57.211 Cancellation of health professions students loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

§ 57.212 Repayment or cancellation of loans for practice in a health manpower shortage area.

(a) *Practicing in a health manpower shortage area.* A person who:

(1) Has obtained a degree as specified in section 741(f)(1)(A) of the Act;

(2) Has obtained one or more health professions student loans or, under a written loan agreement entered before October 12, 1976, any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a health professions school; and

(3) Enters into an agreement to practice his or her profession for at least 2 consecutive years in a health manpower shortage area designated under section 332 of the Act, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) below. Prior to entering an agreement for repayment of loans, other than health professions student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made to persons who meet the conditions set forth in paragraph (a) as follows:

(1) Upon completion by the borrower of the first year of practice as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(2) Upon completion by the borrower of the second year of practice the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(3) Upon completion by the borrower of a third year of practice, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the date the borrower began his or her practice except that, the amount of loan repayments that may be made on behalf of a borrower in any year under paragraph (a) of this section may not exceed $10,000, and the total amount of payment which can be made under this section with respect to any loan may not exceed $50,000.

(c) *National Health Service Corps (NHSC) Scholarship recipients.* A recipient of an NHSC Scholarship under 42 CFR Part 62 may not enter into an agreement with the Secretary under this section until either (1) the participant has completed the NHSC Scholarship service obligation; (2) the Secretary has recovered from the participant an amount determined under 42 CFR 62.10, or (3) any service or payment obligation has been waived under 42 CFR 62.12. An NHSC Scholarship is not an educational loan for purposes of an agreement under this section.

Exhibit III

Nursing Student Loan Program:

42 CFR 57.310—Loan Repayment and Collection

course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status; and

(ii) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's financial ability to attend the school on a full-time or half-time basis. The school must document the criteria used for determining these costs.

(c) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application. To comply with this requirement, a school may require that a student provide, for example: Photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; or other documentation that the school considers necessary to help assure that information on the loan application is correct.

(Approved by the Office of Management and Budget under control number 0915-0048)

[50 FR 34434, Aug. 23, 1985, as amended at 52 FR 19144, May 21, 1987; 53 FR 46554, Nov. 17, 1988]

§ 57.307 Maximum amount of nursing student loans.

The total of the nursing student loans made from the fund to any student for an academic year may not exceed $2,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month academic year may be proportionately increased. The total of all nursing student loans to any student may not exceed $10,000.

§ 57.308 Nursing student loan promissory note.

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 6 percent per year.

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

(3) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915-0095)

§ 57.309 Payment of nursing student loans.

(a) Nursing student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time or half-time student.

§ 57.310 Repayment and collection of nursing student loans.

(a) Each nursing student loan, including accrued interest, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Repayment of a loan must begin 9 months after the student ceases to be a full-time or half-time student, except that if a borrower reenters the same or another school as a full-time or half-time student within the 9-month period, the date upon which interest will accrue and the repayment period will begin will be determined by the date upon which the student last ceases to be a full-time or half-time student at that school.

(1) The following periods will be excluded from the 10-year repayment period: (a) All periods up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or the U.S. Public Health Service Commissioned Corps; (ii) all periods up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods up to a total of 5 years during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include only full-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least 1 academic year which will advance the borrower's knowledge of and strengthen his or her skills in the provision of nursing services.[3]

(2) Subject to the provisions of paragraph (b)(3) of this section, a borrower must establish a repayment schedule with the school providing for payments not less often than quarterly. Any borrower whose repayment becomes more than 60 days past due must be placed on a monthly repayment schedule by the school. A borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(3) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

(b) *Collection of nursing student loans.* (1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing NSL funds in any academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirement of this subparagraph may be met by correspondence if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with NSL funds, and update the personal information collected prior to disbursing NSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

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[3] Individuals who received nursing student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.314(a)(3)(1976) as adopted on February 4, 1974. These provisions can be found at 39 FR 16473 (May 9, 1974), and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, Room 8-48, Rockville, Maryland 20857.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(2) *Late charge.* (i) For any nursing student loan made after June 30, 1969, but prior to October 1, 1985, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment under section 836(b)(2) of the Act, or cancellation or repayment under section 836(b)(3) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(ii) For any nursing student loan made on or after October 1, 1985, the school shall assess a charge for failure of the borrower to pay all or any part of an installment when the loan is more than 60 days past due and, in the case of a borrower who is entitled to deferment under section 836(b)(2) of the Act, for any failure to file satisfactory evidence of the entitlement within 60 days of the date payment would otherwise be due. No charge may be made if the loan is less than 61 days past due. The amount of this charge may not exceed an amount equal to 6 percent of the amount due at the time the charge is calculated. The school may elect to add the amount of this charge to the principal amount of the loan as of the day on which the charge is calculated, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any nursing student loan made after June 30, 1969, the school may require the borrower to make payments of at least $15 per month on all outstanding nursing student loans during the repayment period.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the

school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(5) *Disclosure of taxpayer identity information.* Upon written request by the Secretary, the Secretary of the Internal Revenue Service (IRS) may disclose the address of any taxpayer who has defaulted on a nursing student loan, for use only by officers, employees, or agents of the Department, to locate the defaulted borrower to collect the loan. Any such mailing address may be disclosed by the Secretary to any school from which the defaulted borrower received a nursing student loan, for use only by officers, employees, or agents of the school whose duties relate to the collection of nursing student loan funds, to locate the defaulted borrower to collect the loan. Any school which requests and obtains such address information must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

(Approved by the Office of Management and Budget under control number 0915-0095)

[50 FR 34434, Aug. 23, 1985, as amended at 52 FR 10195, Mar. 30, 1987]

§ 57.311 Cancellation of nursing student loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

§ 57.312 Repayment of loans for service in a shortage area.[3]

(a) *Service in a shortage area.* Subject to the availability of funds, a person who: (1) Has obtained a degree as specified in section 836(h)(1)(A) of the Act; (2) has obtained one or more nursing student loans or any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a school of nursing; and (3) enters into an agreement with the Secretary to serve as a full-time registered nurse for at least 2 consecutive years in a shortage area determined by the Secretary, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) of this section. Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made by the Secretary to persons who meet the conditions set forth in paragraph (a) of this section. Payment will be as follows:

(1) Upon completion by the borrower of the first year of service as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which

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[3] Effective November 22, 1982, the Secretary stopped accepting applications under § 57.312 because Federal funds are not available for this provision.

Exhibit IV

Guaranteed Student Loan Programs:

34 CFR 668 and 682 (selected provisions)—Department of Education's "Default Reduction Initiative"

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistant General Provisions regulations (34 CFR Part 668) and the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR Part 682). The final regulations are needed to implement the Secretary's default reduction initiative, and clarify that certain regulations in Part 682 apply to the Supplemental Loans for Students (SLS) Program.

Note: Pub. L. 100–297, enacted April 28, 1988, has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

DATES:

Effective date: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 668.15, 668.23, 668.44, 668.90, 682.604, 682.606, and 682.610. Those sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Section 682.603(c) applies only to the certification of a loan application on or after October 1, 1989. Section 682.606(b)(2) applies only to the refund calculation for a student whose last recorded day of attendance occurs on or after June 5, 1990. Section 682.411(h) applies only to a loan for which a request for preclaim assistance is made on or after December 4, 1989. Also, if a lender holds more than one loan made to a specific borrower, and those loans were acquired by the lender prior to that date, the requirements of § 682.411(h) are satisfied as to all of those loans if the lender complies with those requirements as to at least one of those loans.

Sections 668.44(c)(1)(ii) through (iv) and (d) apply only to loans certified for periods of enrollment beginning on or after December 1, 1989. However, the requirements of section 487(a)(8) of the Act regarding disclosures continue to apply.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, telephone number (202) 732–4242.

SUPPLEMENTARY INFORMATION: On September 16, 1988, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (53 FR 36216). The NPRM included a detailed discussion of the various regulatory proposals included in the default reduction initiative, and that discussion will not be repeated here. The comment period on the NPRM was extended through February 28, 1989 (53 FR 39317).

The Secretary's extensive review of the default issue and the public comments received since the publication of the NPRM have resulted in a number of significant changes to the NPRM. A discussion of those changes follows. A full discussion of other changes to the NPRM is contained in the Summary of Comments and Responses, published as an appendix to the regulations.

The Secretary believes that several additional regulatory initiatives are needed to address the default problem. Those new regulatory initiatives will appear in a new NPRM to be published separately.

Revisions to the Notice of Proposed Rulemaking

Part 668—Student Assistance General Provisions

Section 668.15 Additional factors for evaluating administrative capability

The Secretary has revised the provision in this section that would have authorized the initiation of a proceeding to limit, suspend, or terminate (LST) the eligibility of a school with a default rate above 20 percent. The revised provision authorizes the initiation of such a proceeding beginning in 1991 if the school's default rate exceeds 60% (to be lowered to 40% in annual increments of 5%) or if it exceeds 40% and was not reduced by an increment of at least 5% from the preceding year's rate (*e.g.*, a 50% rate must be reduced to 45% or below). As noted in revised § 668.90, a school against whom an LST action is brought under this provision will be able to avoid an LST sanction by demonstrating that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668. This defense to LST sanctions based on a high default rate is referred to in this document as "the Appendix D defense."

It may not be necessary or appropriate to initiate LST actions against all schools that exceed the default rate triggers described above. Before deciding whether to institute an LST action against a school, the Secretary will generally request from the school the information described in §668.15(b)(2) pertaining to the causes of default by the school's students. In deciding whether to initiate a proceeding, the Secretary intends to consider this information, the progress being made by the school in reducing defaults, other mitigating factors, and the likelihood of the school's satisfying the elements of the Appendix D defense.

Under the revised § 668.15(e), a school with a default rate over 20% could be required to implement specified reasonable and appropriate default reduction measures—in effect, a default management plan. The contents of each school's plan will be established by the Secretary based on a review of the school's analysis of its causes of default, any recommendations by the cognizant guarantee agencies, consultation with the school, and the information presented by the school at any informal hearing provided at the school's request. The goal of this process will be to select measures to address the major causes of default by the school's students.

While the authority to require high default schools to implement reasonable and appropriate default reduction measures has been in the General Provisions regulations since 1975, the use of a cumulative default rate in those regulations, and the inadequacy of available data on defaults that occurred in the early years of the GSL program, has made taking such actions difficult. The use of fiscal year default rates in the final regulations removes this impediment to the effective use of this authority.

In addition to the LST and default management plan initiatives, under revised §§ 682.604 and 682.606, a school with a default rate over 30% is required to adopt two "core" default reduction measures—a *pro rata* refund policy and delayed certification of loan applications—designed to reduce defaults by dropouts. The Secretary believes that this multi-tiered approach will preserve access to postsecondary education for all students regardless of income level, while protecting the Federal taxpayer from unreasonable risks of loss. The final regulations recognize that Federal policy should not discourage schools from serving the most disadvantaged members of society, but that it is nevertheless fair to require schools that present a high default risk to take reasonable measures to reduce that risk.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

The final regulations do not revise current § 668.22, since the proposed revisions to that section in the NPRM were based on the application of a *pro rata* refund requirement to all schools. As noted below, the final regulations impose that requirement only on schools with default rates above 30%.

Section 668.44 Institutional information

The final regulations revise this section to require that a school disclose a job placement rate based on the information it has regarding the job placement of its students, including dropouts. The Secretary was concerned that the NPRM's proposed exclusion from the job placement rate calculation of graduates who do not respond to a school's job placement questionnaire could result in disclosure of inflated job placement rates. This potential bias is eliminated by the approach taken in the final rule. The school is required to disclose to prospective students the number of graduates for whom the school lacks job placement information, and the number of graduates that decide not to seek employment in the relevant occupation. In this way, the disclosures required by this section will provide data that is accurate and complete, in a simplified form that facilitates informed consumer choice. By requiring disclosure of job placement rates for all students, not just graduates, the final rule also provides prospective students with more useful information than would disclosures of job placement rates just for graduates.

In order to ensure that the job placement information disclosed to prospective students by a school under this section is accurate, each program review of the school conducted by the Department will include an examination of the procedures employed by the school in compiling that information, and, in selected cases, verification of the accuracy of that information through inquiries to employers and former students.

Section 668.90 Initial and final decisions—Appeals

This section has been revised to reflect the new 60% and 40% default rate thresholds for LST proceedings described in § 668.15 and discussed above. In addition, the elements of the Appendix D defense that a school may assert to avoid LST sanctions have been added to this section. This defense is satisfied, and the administrative law judge is therefore precluded from imposing an LST sanction against the school based on a high default rate, if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D to Part 668.

It should be emphasized that the Appendix D defense prevents the termination of a school based on its default rate if the school shows that it has implemented the measures listed in Appendix D. Thus, while a school's default rate of more than 60%, or of more than 40% absent a 5% annual reduction, is grounds for initiating an LST proceeding, it cannot serve as the basis for imposing an LST sanction on a school that demonstrates its administrative capability under this defense. The Secretary notes, however, that absent this defense, the ALJ must impose the sanction sought by the designated Department official; the ALJ retains no discretion in such a case. In effect, the LST provisions of § 668.15 and the Appendix D defense operate to (1) require that each school with a default rate above the rates described above implement the measures listed in Appendix D, and (2) make LST sanctions apply automatically to a school that fails to make a diligent effort to do so. The Secretary believes that, although some of the measures in Appendix D will be more effective for some schools than for others, the serious risk of financial loss to the GSL and SLS programs posed by schools with very high default rates requires that those schools take each of these steps, in order to provide the substantial incremental benefit in default reduction that each step will afford at every school.

The Secretary further notes that the Appendix D defense does not prevent the imposition of an LST sanction against a school based on a violation of program requirements. The Secretary will view a school's substantial noncompliance with a requirement of the regulations contained in this document as a serious infraction, requiring imposition of the termination sanction in most cases.

Part 682—Guaranteed Student Loan and Plus Programs

Section 682.410 Fiscal, administrative, and enforcement requirements

The final regulations revise the NPRM by increasing from 15% to 20% the school default rate that will trigger a guarantee agency's duty to conduct a program review of a school. A review is not required of a school with a rate above 20% if the school is subject to a default management plan imposed by the Secretary under § 668.15, or if the school's rate is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions greatly reduce the burden on guarantee agencies with respect to the number of reviews required to be conducted, while preserving the effectiveness of the program review requirement as an element of the default reduction initiative.

Section 682.603 Certification by a participating school in connection with a loan application

Under the NPRM, one default reduction measure that a school with a default rate above 20% would have had to justify not implementing was delaying the certification of a borrower's loan application so that the borrower's loan proceeds were not received by the borrower until at least 30 days into the loan period. *See* NPRM proposed § 668.90(a)(3)(iii)(B) and proposed Appendix D to Part 668, item 14. Section 682.603 of the final regulations makes delayed certification with respect to the school's first-time borrowers a requirement applicable to any school with a default rate over 30%, until the Secretary notifies the school that its rate no longer exceeds that level. To ensure that this provision operates to prevent the delivery of loan proceeds to early dropouts as intended, this section also specifies that the student's endorsement of the check for the first disbursement of a loan subject to delayed certification may not occur until 30 days into the loan period.

The Secretary believes that delayed delivery of loan proceeds to first-time borrowers should apply to all schools, and has proposed legislation to accomplish this goal. These regulations only effect this policy for high default schools, because the Secretary believes that the impact on the programs of applying this policy to all schools is serious enough that the Congress should be given the opportunity to decide whether such a step is warranted.

Section 682.606 Refund policy

This provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30%, and to limit the required application of such a policy by the school to the shorter of the first six months in the student's program of study, or the first half of that program. All other schools and academic periods continue to be subject to the fair and equitable refund requirements of § 682.606(b), and Appendix A to Part 682. As with the delayed certification requirement, this rule would require high default schools to take a step that addresses the troubling problem of defaults by early dropouts. The Secretary is limiting the application of this rule to high default schools because he believes that the regulatory imposition of a mandated refund policy should only be undertaken for schools whose default experience provides strong justification for doing so on program integrity grounds. The Secretary believes that the importance of a *pro rata* refund policy in reducing early dropouts provides that justification when a school's default rate exceeds 30%.

Section 682.610 Records, reports, and inspection requirements for participating schools

The final regulations revise this section to require each school that is required to use a "track record" disclosure form set forth in Appendix A to Part 668 to provide a completed form to the Secretary, along with information on the total cost of the program involved, on an annual basis. The NPRM required that the completed form be provided to each prospective student, but did not mandate that the school provide a copy of the form to the Secretary.

The Secretary will use the track record information provided under this provision in making various policy decisions relevant to vocational training programs, and in formulating his proposals for reauthorization of the Higher Education Act in 1991. The Secretary also intends to use this track record information to compile and disseminate lists of undergraduate nonbaccalaureate vocational training programs, arranged by geographic area and vocation in which each program is offered, to further enhance consumers' ability to make well-informed choices about enrollment in vocational training programs. The recipients of the lists will include high schools, welfare offices, and other entities likely to receive requests for information on these programs from prospective students.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 2,452 parties submitted comments on the proposed regulations. In addition, the Secretary received over 1,200 comments in response to the separate request for comments on the default issue published in the **Federal Register** on November 3, 1988 (53 FR 44514). An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues raised by commenters are discussed under the section of the regulations to which they pertain. Technical and other minor comments and changes are not addressed.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan progams-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: June 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 668 and Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.15 is revised to read as follows:

§ 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The fiscal year default rate, as defined in paragraph (f) of this section, on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the GSL and SLS fiscal year default rate for an institution exceeds 20 percent for any fiscal year after fiscal year 1988, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV, HEA programs, if—

(i) The institution's GSL and SLS fiscal year default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (*e.g.*, a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's GSL and SLS fiscal year default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information.

within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its sudents, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of graduates of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(3) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(4) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(*1*) Title IV student aid recipients.

(*2*) High school graduates or holders of GED certificates at the time of enrollment.

(*3*) Students admitted on the basis of "ability to benefit" as defined in § 668.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph (a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's GSL and SLS fiscal year default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV, HEA programs.

(f) The following definitions apply to this section and § 668.90 of this part:

(1) "Fiscal year default rate" means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average of the rate calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendanc at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order t avoid default by the borrower, is considered as in default for purposes o this definition.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calenda year.

(Authority: 20 U.S.C. 1082, 1094)

3. In section 668.23, paragraph (f)(1)(vi) is amended by removing the word "and"; paragraph (f)(1)(vii) is amended by removing the period and adding in its place "; and"; and a new paragraph (f)(1)(viii) is added, to read a follows:

§ 668.23 Audits, records, and examinatio

* * * * *

(f) * * *

(1) * * *

(viii) Information substantiating all disclosures made to a prospective student under § 668.44 (c) through (f) o this part.

* * * * *

4. Section 668.44 is amended by revising paragraph (c), and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 668.44 Institutional information.

* * * * *

(c)(1)Prior to a prospective student's enrollment or execution of an enrollment contract, whichever occurs earlier, in an undergraduate non-baccalaureate degree program designe to prepare students for a particular vocational, trade, or career field, the institution shall disclose to the prospective student—

(i) All licensure or certification requirements established by the State i which the institution is located for the particular vocational, trade, or career field;

(ii) The pass rate of graduates of the program for the most recent calendar year that ended not less than six mont prior to the date of disclosure, on any licensure or certification examination required by the State for employment i the particular vocational, trade, or career field;

(iii) The job placement rate for students who were originally schedule at the time of enrollment, to complete the program in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment for any graduate for whom the institution does not possess evidence, documented in the graduate's file, showing that the graduate has obtained employment in the occupation for which the program is offered.

(iv) The completion rate for students in the program for the most recent calendar year that ended not less than 18 months prior to the date of disclosure. This rate is calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year that successfully completed the program, or obtained full-time employment in the occupation for which the training was offered, within 150% of the amount of time normally required to complete the program; and

(v) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(2) For purposes of this paragraph (c), a student is "originally scheduled, at the time of enrollment, to complete the program" on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" must be calculated on a *pro rata* basis for students enrolled on a less than full-time basis.

(d) With respect to a program other than an undergraduate non-baccalaureate program designed to prepare students for a particular vocational, trade, or career field, prior to a prospective student's enrollment or execution of an enrollment contract, whichever is earlier, in a program for which the institution publicly makes a claim as to the job placement experience of its students as a means of attracting students to enroll in the program, the institution shall disclose to the prospective student—

(1)(i) The information described in paragraphs (c)(1) (i) through (iii) of this section, in the case of a baccalaureate or graduate program designed to prepare students for a particular vocational, trade, or career field; or

(ii) Other valid employment statistics for students who have enrolled in the program, for any other program:

(2) The information described in paragraph (c)(1)(iv) of this section; and

(3) Any other information necessary to substantiate the truth of the claim as to job placement.

(e) If an institution makes a claim to a prospective student regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field, it must disclose to the propsective student detailed statistics and other information necessary to substantiate the truthfulness of that claim.

(f)(1) The institution shall make the disclosure required under paragraphs (c)(1) (ii) through (iv) of this section using the applicable disclosure form set forth in Appendix A to this part, except that an institution may use an appropriate foreign language version of that form for a student whose primary language is not English.

(2) The institution shall indicate in the space provided for that purpose on the form the number of graduates of the program included in the calculation of the job placement rate disclosed on the form who state in writing that they have chosen not to attempt to obtain employment in the occupation for which the program is offered, and the number of such graduates, if any, who fail to indicate within 60 days, in response to a questionnaire seeking that information sent by the institution to the last known address of the graduate, whether they have obtained employment in that occupation.

(3) The completed disclosure form must be signed by the student and a copy thereof maintained by the institution in the student's file.

(Authority: 20 U.S.C. 1082, 1092)

5. In section 668.72, paragraph (j) is amended to remove the word "or", paragraph (k) is amended to remove the period and add, in its place, "; or", and a new paragraph (l) is added to read as follows:

§ 668.72 Nature of educational program.

* * * * *

(l) Any matters required to be disclosed to prospective students under § 668.44 of this part.

(Authority: 20 U.S.C. 1094)

6. Section 668.90 is amended by adding a new paragraph (a)(3)(iii), and revising the citation of legal authority to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in § 668.15(b)(1) of this part, if the administrative law judge finds that the institution's GSL and SLS fiscal year default rate, as defined in § 668.15(f) of this part, meets the conditions specified in § 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the administrative law judge shall find that the sanction sought by the designated Department official is warranted, except that the administrative law judge shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part.

* * * * *

(Authority: 20 U.S.C. 1082, 1094)

7. Part 668 is amended by adding an Appendix A to read as follows:

Appendix A—Track Record Disclosure Forms

This appendix provides forms for institutions to use to disclose to prospective students the information required by 34 CFR 668.44(c) (2) through (4). The use of these forms is required by 34 CFR 668.44(f).

An institution shall use Form I in connection with a program offered for a vocational, trade, or career occupation for which there exists a State licensure or certification examination required by the State for employment in the occupation. For all other programs for which disclosures under 34 CFR 668.44(c) (2) through (4) are required, the institution shall use Form II.

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (*name of program*), (*name of institution*) wants you to know that, according to the latest information—

____%, or __ of the ____ students in this program scheduled to graduate in (*year*) went on to graduate;

• ____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (*name of occupation or field for which training is offered*); and

____%, or __ of the ____ graduates of this program taking the (*name of test*) administered by the State of (*name of State in which the program is being offered to the student*) in (*year*) passed that examination.

I have read and understood the graduation rate, licensing or certification examination pass rate, and job placement rate information provided above.

Date

(*Prospective student's signature*)

*We have been told by ___ of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ___ of that year's graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Form II

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (*name of program*), (*name of institution*) wants you to know that, according to the latest information—

___%, or _ of the ___ students in this program scheduled to graduate in (*year*) went on to graduate: and

* ___%, or _ of the ___ students scheduled to graduate in that year have found jobs in (*name of occupation or field for which training is offered*).

I have read and understood the graduation rate and job placement rate information provided above.

Date

(*Prospective student's signature*)

*We have been told by ___ of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ___ of that year's graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

8. Part 668 is amended by adding a new Appendix D to read as follows:

Appendix D—Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the GSL and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under § 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a *pro rata* refund policy, as defined in 34 CFR 682.606(b)(2).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any GSL or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a GSL or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of GSL and SLS program loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the GSL and SLS loan programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

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(i) (A) General information on the average indebtedness of student borrowers who have obtained GSL or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on GSL and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (*e.g.*, loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a GSL or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

9. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

10. A new § 682.104 is added to read as follows:

§ 682.104 Applicability of regulations to the Supplemental Loans for Students Program.

The Supplemental Loans for Students (SLS) program is a continuation of the portion of the predecessor PLUS Program that provided for loans to student borrowers. Accordingly, the provisions of the regulations in this part, Part 600, and Part 668, applicable to loans made to students under the PLUS Program apply to loans made under the SLS Program, except where inconsistent with the Act.

(Authority: 20 U.S.C. 1078–1, 1082)

11. Section 682.410 is amended by removing the word "and" at the end of paragraph (c)(1)(i)(B), by removing the period at the end of paragraph (c)(1)(ii)(B) and adding in its place "and", by adding a new paragraph (c)(1)(iii), and by revising the citation of legal authority to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(c) * * *

(1) * * *

(iii) Each participating school located in a State for which the guarantee agency is the principal guarantee agency that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 34 CFR 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000.

* * * * *

(Authority: 20 U.S.C. 1078, 1078–1, 1082, 1094, 1097)

12. Section 682.411 is amended by revising paragraph (h) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

* * * * *

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

* * * * *

13. Section 682.603 is amended by adding a new paragraph (c) and revising the citation of legal authority to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first GSL or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures that the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

14. Section 682.604 is amended by revising the section heading, by adding new paragraphs (f), (g), and (h), and revising the authority citation to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each GSL and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first GSL or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a GSL or SLS program loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each GSL and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained GSL or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (*e.g.*, loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to Part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)–(g) of this section as to that borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

15. Section 682.605 is amended by revising paragraph (a) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part, for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607 of this part.

* * * * *

16. Section 682.606 is revised to read as follows:

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a GSL or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's GSL, SLS, or PLUS program loans under 34 CFR Part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after 1988, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose withdrawal date is after the earlier of—

(i) The halfway point (in time) for the student's program of study, or

(ii) Six months after the commencement of the student's program.

(c)(1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded upward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, plus—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the

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student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the borrower has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

17. Section 682.607 is amended by revising paragraph (c) to read as follow:

§ 682.607 Payment of a refund to a lender.

* * * * *

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as detremined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (*e.g.*, semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

* * * * *

18. Section 682.610 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 682.610 Records, reports, and inspection requirements for participating schools.

* * * * *

(f) *Information sharing.* Upon request, a school shall promptly provide a lender or guarantee agency with any information it has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in Appendix A, Part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by Part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Section 668.15 Additional factors for evaluating administrative capability

Comments: The majority of commenters objected to the provisions in this section that would authorize the initiation of an LST action against a school with a GSL and SLS default rate greater than 20 percent. Many commenters objected to use of this criterion to eliminate a school from participation in all Federal student financial aid programs. They believed that this factor alone was not an adequate indicator of a school's administrative capability. Many commenters also believed that a school should have the option of implementing a default reduction plan to reduce its default rate prior to action by the Secretary to terminate the school.

Discussion: Several changes have been made. The Secretary has revised this section to implement a multi-tiered approach that authorizes the initiation of an LST action beginning in 1991 if the school's default rate exceeds 60% (this standard to be lowered to 40% in increments of 5% by 1995), or if that rate exceeds 40% and has not been reduced by an increment of at least 5% from the preceding year's rate. Under §§ 682.604 and 682.606, schools with default rates over 30% would be subject to two mandatory default reduction measures—a *pro rata* refund policy and delayed certification of loan applications for first-time borrowers. Finally, under this section, schools with default rates over 20% would be required to implement default management plans established by the Secretary on a case-by-case basis, with components of the plan being drawn from Appendix D, recommendations of the school and guarantee agencies, and other sources. The school would be provided an opportunity for an informal hearing prior to imposition of a plan.

Comments: Several commenters disagreed with the use of a fiscal year default rate. They thought that a cumulative rate or a rate that reflected a longer time frame would be more equitable. Other commenters urged the use of a dollar-based rate, rather than a borrower-based rate, and a number of commenters urged that the rate take account of post-default collections. Some commenters also expressed concern about the quality of available data on defaults.

Discussion: No change has been made. The Secretary believes that using a fiscal year default rate is more equitable than using a cumulative rate because it does not penalize a school for a high default rate incurred before it took steps to reduce defaults. Indeed, the positive results of actions taken by a school to reduce its default rate would be readily evident from its fiscal year rates, but not from its cumulative rate. Further, a default that takes place more than two years after the borrower leaves school is unlikely to be attributable to the actions of the school and should therefore not be charged to the school.

A borrower-based rate has been retained in preference to a dollar-based rate to avoid numerous technical issues inherent in the latter approach, such as the calculation of outstanding balances, attribution of payments, capitalization of interest, and the like. A dollar-based rate would also tend to unfairly and artificially reduce the rates for longer programs, since graduates of those programs have loan balances that are much larger, relative to the loan balances of default-prone dropouts, than the graduates of shorter programs. Recognizing past problems with the quality of default-related data submitted to the Department by guarantee agencies, the Secretary has recently revised the reporting requirements for guarantee agencies to ensure that the data collected from all guarantee agencies on which actions would be taken under these regulations is both accurate and complete.

Comments: One commenter asked how deferments are treated in the default rate calculation.

Discussion: No change has been made. It is the entry of a loan into repayment that is relevant to the default rate calculation. Subsequent deferments are considered as falling within the repayment period. The end of a deferment period does not result in the borrower "entering repayment," even though the duty to make payments resumes at that time, since the borrower is considered to have been in repayment throughout the deferment period. Thus, a deferment granted a borrower after entering repayment on a loan in a given fiscal year is ignored in calculating the school's rate for that fiscal year. This is necessary both because not all deferments appear on the "tape dump" (the current source of the Secretary's default information) and because a default by a borrower after leaving deferment status may be too removed in time from the borrower's attendance at the school to be fairly charged to the school.

Comments: Many commenters claimed that it is unfair to place the burden of proof on the school to justify a high default rate. One commenter representing numerous lenders supported placing the burden of proof on the school, but recommended that a 50% default rate be used to trigger this rather than the 20% rate proposed in the NPRM. Many commenters objected to excluding the composition of the student body as an acceptable explanation for a high default rate. Other commenters wanted schools to have the option to deny certification of a loan, as well as require cosigners or credit checks for borrowers, to enable them to refuse loans to likely defaulters.

Discussion: A change has been made. Section 668.90 has been revised to clarify the defense that may be used to avoid LST sanctions. The Secretary believes that the burden of proof is appropriately placed on the school to demonstrate its administrative capability when a high default rate gives rise to a strong inference that this capability is lacking. At the high default rates specified in the final rule, this inference clearly arises. The recommendation that schools be allowed to require cosigners or credit checks, and to refuse to certify applications for otherwise eligible Stafford and SLS borrowers, would require legislative changes to implement, and thus are beyond the scope of these regulations.

Comments: Several commenters were disturbed by the possibility that schools with very few borrowers would be subject to sanctions based on their default rates.

Discussion: A change has been made. The Secretary recognizes that schools with very few borrowers could be placed at a disadvantage if they are judged under the default rate formula outlined in the NPRM, so he has revised that provision to evaluate a school with 30 borrowers or less entering repayment in a fiscal year based on a "rolling" three-year average default rate. In addition, it should be noted that an LST action allowed by this regulation against high default rate schools is not mandatory, and could be declined if a school's default volume is so low that the Department's resources would be more effectively employed in other ways.

Comments: A number of commenters recommended that the default rate calculation not treat as defaults, loans on which the borrowers begin or resume repayment after default.

Discussion: No change has been made. The fiscal year default rate is designed to yield information as to a school's performance in default-related matters. The use of post-default collection information would reduce the usefulness of the rate for this purpose by introducing factors unrelated to a school's default-related performance, such as the guarantor's effectiveness in collecting defaulted loans.

Comments: Several commenters asked whether a school would be given "credit" for defaulted loans that are purchased by that institution.

Discussion: A change has been made. The Secretary believes that a payment made by a school or related party to avoid a default is not an appropriate basis for excluding a loan from a school's default rate, and has revised this section to reflect that position.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

Comments: A number of commenters suggested that it would be inappropriate and unfair to establish, under proposed § 668.22(a)(3) (i) and (ii), two distinct refund attribution formulas—one for GSL, SLS, and PLUS loan recipients, and one for other students.

Discussion: A change has been made. Since the proposed revisions to § 668.22 were based on the application of a *pro rata* requirement to *all* schools, these regulations do not revise current § 668.22. Pursuant to § 682.606(b)(2) of these final regulations, a school is required to adopt a *pro rata* refund policy as one of two "core" default reduction measures only if its default rate exceeds 30%, and then only for certain borrowers and academic periods.

Section 668.44 Institutional information

Comments: A number of commenters suggested that the disclosures required by § 668.44 (c) through (f) of the NPRM should be reserved for institutions having "unacceptable" default rates. Many commenters agreed that the disclosures are needed, but suggested that they apply to all programs and all schools. Several commenters supported the Secretary's proposal to target these disclosures to vocational training programs, particularly given the aggressive marketing techniques employed by many trade and technical schools.

Discussion: No change has been made. While the provisions of current § 668.44 (a) and (b) are applicable to all schools, the Secretary believes that the dropout rate, placement rate, and State licensing examination pass rate disclosures, specified in § 668.44 (c) through (f), should be mandated only for a school that offers either an undergraduate non-baccalaureate trade program or another program (whether or not undergraduate non-baccalaureate) for which it makes a claim regarding job placement in order to attract prospective students. As stated in the preamble to the NPRM, the Secretary believes that adequate and accurate information on these matters is of critical importance to prospective students evaluating the quality of such programs. It should be noted that the provisions of § 668.44 (c) through (f) would not apply to a program that is primarily intended as preparatory for, and acceptable towards, a baccalaureate or equivalent level degree (*e.g.* Associate of Arts degree programs offered by community colleges), as distinguished from a course of study designed to provide a complete vocational training program.

Comments: Many commenters expressed concerns about the administrative burden imposed by the information collection and disclosure activities required by § 668.44 (c) through (e), and by the requirement that a school utilize and maintain the forms required by § 668.44(f) and Appendix A to Part 668. As a result a number of commenters recommended that the disclosures specified in the NPRM only be required of schools having unacceptable default rates.

Discussion: No change has been made. By statute, a school must disclose dropout rate, placement rate, and State licensing examination rate information for any programs as to which the school makes a marketing claim regarding job placement. *See* section 487(a)(8) of the HEA. This requirement applies to high default and low default schools alike. Given the fact that undergraduate nonbaccalaureate vocational training programs are marketed and purchased almost exclusively for their value in imparting employable vocational skills, the intent of section 487(b)(8) can be achieved only if the information listed in § 668.44 (c) through (f) is disclosed for each program of that type. Moreover, it is apparent that the market forces that should operate to reward effective programs and weed out the ineffective ones are not currently working. The Secretary believes that more informed consumer choice will do much to correct that problem, and thereby substantially reduce defaults, but this can only be accomplished if consumers have access to the information required under these provisions for all programs of this nature, good and bad. The Secretary, in § 668.44(f), has also specified that the required information described in § 668.44(c) (2) through (4) be disclosed to prospective students using the "track record" disclosure forms contained in Appendix A. The Secretary believes that the use of a standardized form, in an easy-to-read format and in language that can be readily understood by all students, will greatly enhance a prospective student's ability to fully consider the information provided, and to compare the various programs in which he or she may be interested.

Comments: One commenter indicated that a variety of factors could affect the decision of a graduate not to seek employment in the occupation for which the training was offered by the school. The commenter argued that the job placement rate calculation specified in § 668.44(c)(3) should exclude these graduates.

Discussion: A change has been made. The Secretary agrees that there may be valid reasons why a graduate of a program does not seek employment in the occupation for which the training was offered. Section 668.44(c)(3) of these final regulations has been revised to allow a school to note in its disclosure the number of graduates who state in writing that they have chosen not to seek employent in the occupation for which they were trained. However, this provision does not allow the school to include a graduate who discontinues seeking such employment after an unsuccessful search.

Comments: One commenter recommended that the "completion rate" calculation in § 668.44(c)(4) include as completions borrowers who leave school to accept employment in the occupation for which the training was offered.

Discussion: A change has been made. Section 668.44(c)(4) has been revised to include as completions in the completion rate calculation those students who have not successfully completed the program (*i.e.*, graduated), but who have obtained full-time employment in the occupation for which the training was offered within 150% of the normal time for completion of the program.

Comments: One commenter suggested that, in using the documents specified in Appendix A to Part 668, as required by § 668.44(f), accommodation should be made for institutions that serve largely Spanish-speaking populations.

Discussion: A change has been made. Section 668.44(f) has been revised to permit the use of a foreign language version of the forms for students whose primary language is not English.

Comments: One commenter recommended that the Secretary, as part of these default reduction measures, require lenders to disclose to borrowers information about the role that secondary markets play in the GSL, SLS, and PLUS programs. The commenter also suggested that lenders be required to give notice to the guarantor, the school, and the student whenever a loan is sold or transferred to another eligible lender.

Discussion: No change has been made. While the Secretary agrees with the concerns expressed by the commenter, the suggestions are not within the scope of the final regulations. A separate NPRM, in which these issues will be addressed, is currently under development.

Section 668.90 Initial and final decisions—appeals

Comments: The comments received for this section mirrored the comments made under § 668.15. The major issues addressed by commenters were the use of a 20% default rate as a trigger to limit, suspend, or terminate an institution from participation in all Title IV programs, the use of a fiscal year default rate, and the relevance of the composition of a school's student body.

Discussion: A change has been made. These issues have been addressed in the preamble and elsewhere in this Appendix. This section has been revised to include the elements of the Appendix D defense that a school may prove to avoid LST sanctions. This defense prevents termination of a school if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668.

Appendix D—Default Reduction Measures

Comments: The Secretary received broad support for the idea that a school with a high default rate should adopt default reduction measures such as those contained in Appendix D. A number of school commenters noted that many of these measures were already part of the standard procedures. Many commenters were concerned about the administrative burden that would be imposed on a school performing some of these measures.

Discussion: A change has been made. To assist schools in identifying those measures appropriate for their circumstances, the Secretary has grouped the measures according to the cause of default that each is meant to address. Any school with a default rate over 20% could be required to implement a default management plan containing some of the measures in Appendix D, as well as other appropriate default reduction steps. These steps would also be selected to address the school's circumstances. In this manner, the Secretary and the school will be able to select those measures that require only the administrative effort necessary to adequately and efficiently address the school's particular causes of default.

Comments: One commenter was concerned that a school might be prohibited by State law from withholding an academic transcript of a former student. Another commenter argued that withholding a transcript would be counterproductive because, in the case of a student seeking employment, denying a request from a prospective employer for an academic transcript would prevent the borrower from acquiring a job, perhaps preventing the borrower from repaying the loan.

Discussion: A change has been made. The Secretary concurs with the objections raised and has deleted this measure from the final regulation.

Comments: Several commenters expressed concern over the suggestion in Appendix D that schools revise admission policies, as these policies, in the case of community colleges, are sometimes mandated by the State.

Discussion: A change has been made. The final regulation specifies that the school should revise its admissions policies in a manner that is consistent with applicable State law.

Comments: Many commenters requested clarifications about the applicability of the Fair Debt Collection Practices Act (FDCPA) to a school that followed the recommendation that it contact a borrower during his or her grace period or after the school received a copy of the lender's preclaims assistance request to urge the borrower to repay the loan.

Discussion: No change has been made. This provision specifies that the school's actions must be consistent with the FDCPA. The authority to interpret the FDCPA rests with the Federal Trade Commission (FTC), not with the Department of Education. In a letter from FTC's Division of Credit Practices to Louise G. Trubek, Executive Director, Center for Public Representation, dated September 12, 1988, the FTC indicated that pre-default collection efforts are not covered by the FDCPA.

Comments: Some commenters argued that, without notification to the school from the lender or guarantee agency that a borrower has made payments to resolve a delinquency, the school might continue efforts to urge the borrower to make payments after the delinquency is resolved, thereby damaging the collectibility of the loan. Other commenters expressed a more general concern that poorly informed or timed collection efforts by schools would do more harm than good.

Discussion: No change has been made. As noted in the NPRM, this default reduction step should be taken in cooperation with the lender to avoid confusing the borrower or damaging the collectibility of the loan. A school should always note in its communications with the borrower that, if the borrower has made payments to cure a delinquency, the school's notice should be ignored.

Comments: Several commenters supported the proposal that, under § 668.90, a school with a default rate over 20%, to avoid an LST sanction, would have to justify not adopting the practice of delaying the certification of a borrower loan application so that the borrower's proceeds were not delivered to the borrower or credited to the borrower's account until the borrower had attended the institution for 30–45 days during the period for which the loan was made. One commenter suggested applying this as a requirement for high default schools with dropout or cancellation problems. Numerous other commenters objected to this measure, expressing concern that it would negatively affect borrowers who need the proceeds from the loan for living expenses, and would create cash-flow problems at some schools.

Discussion: A change has been made. Section 682.603(c) has been amended to require each school with a default rate over 30% to delay certification of the loan application of each student for his or her first GSL or SLS loan for attendance at the school. The Secretary believes that the potential benefit of this measure justifies requiring all schools with default rates over 30% to take this step.

Section 682.410 Fiscal, administrative, and enforcement requirements

Comments: Several commenters supported the Secretary's proposal to establish a default rate that would trigger a guarantee agency's review of a school. However, many commenters suggested that the 15% default rate trigger was too low and should be increased to reduce the burden imposed on schools and agencies by this requirement.

Discussion: A change has been made. The Secretary has revised the NPRM by increasing from 15% to 20% the default rate that triggers a guarantee agency program review of a school. The final rule also excludes from mandatory review any school that is subject to a default management plan imposed by the Secretary under 34 CFR 668.15, and any school whose default rate of over 20 percent is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions significantly reduce the number of program reviews that an agency would have been required to perform under the NPRM while preserving the effectiveness of this requirement as a default reduction tool.

The Secretary notes that. as guarantee agencies have previously been informed. the Department is receptive to proposals from individual guarantee agencies to employ specific selection criteria for program reviews that differ from the "top ten/2%" program review criteria in current § 682.410(c)(1)(ii)(A) and (B). If the Secretary is satisfied that an agency's proposed criteria represent an effective approach to the selection of schools for reviews. he will grant that agency a waiver from those provisions

Comments: Several commenters questioned the guarantee agencies' expertise to conduct program reviews of schools. Some commenters suggested that the reviews should be performed by professionally-trained auditors through program reviews by the Secretary or independent auditors hired by schools to review other Federal programs.

Discussion: No change has been made. Although the Secretary intends to increase Federal lender and school reviews. it is the Secretary's intent that guarantee agencies can and should assume a major responsibility for monitoring their program participants. The Secretary has provided guarantee agencies with extensive training in program review requirements and has developed a comprehensive site review guide for agency use.

Comments: One commenter recommended that the Secretary include a provision that would exempt from guarantee agency review any school that had lowered its default rate to below 15% even if its default rate exceeded 15% in the immediately preceding year.

Discussion: No change has been made. The Secretary believes that the increase from 15% to 20% in the default rate that triggers a guarantee agency review adequately addresses this concern.

Comments: Two commenters supported the requirement of guarantee agency program reviews of schools with excessive default rates. but thought that the review should be limited to the GSL. SLS. and PLUS programs. and should not include other Title IV programs.

Discussion: No change has been made. The provision requiring guarantee agency reviews of schools with fiscal year default rates in excess of 20% applies only to the GSL. PLUS. and SLS programs.

Comments: Several commenters questioned which agency would conduct the compliance program review for schools that deal with several guarantee agencies.

Discussion: No change has been made. An agency may either conduct a joint review of a school with another agency or establish a reciprocal agreement with the other agency. Under a joint review or a reciprocal agreement. each participating agency is responsible for the quality of the review. The Secretary recommends that all reciprocal agreements state that the performing agency will conduct the review in accordance with the OSFA site review guides. and that. as required. any unique requirements of each agency whose review response is to be satisfied by a review under the agreement will be included in each such review.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans

Comments: Some commenters recommended that. rather than requiring the lender to provide a copy of each preclaim assistance request to the school for attendance at which the loan was made. the lender should be allowed to provide this information to the last school attended by the borrower. The commenters noted that the last school attended by the borrower could provide more recent information to assist the lender in its collection efforts.

Discussion: No change has been made. The requirement that a lender provide a school with a copy of the preclaim assistance request is designed to alert the school of a potential default by one of its students. and to allow the school an opportunity to act in a timely manner to avert a default. Fairness requires that the school against whom a default will be charged have the opportunity to make a diligent effort to contact the borrower to encourage repayment.

Comments: Some commenters suggested that lenders be allowed to provide a periodic list to the school of delinquent borrowers for which the lender has requested preclaim assistance from the guarantor. Other commenters suggested that the guarantors. rather than lenders. provide this information to schools.

Discussion: A change has been made. The final regulations require the lender to notify the school within 30 days after it requests preclaim assistance. In this way. the regulations allow time for guarantors wishing to do so to provide schools with this notice on lenders' behalf. through the use of periodic lists. However. the Secretary believes that prompt notice to the school is necessary for any actions taken by the school to be meaningful in averting defaults. and is therefore requiring that notice reach the school within 30 days of the date of the lender's preclaim assistance request.

Section 682.604 Processing the borrower loan proceeds and counseling borrowers

Comments: Many commenters proposed that the lender. not the school. be responsible for counseling the student prior to the disbursement of the loan proceeds to the institution.

Discussion: No change has been made. The Secretary has declined to impose the responsibility of in-person counseling on the lender because the distance between many lenders and the borrowers they serve is often great. The Secretary believes that since a school will typically be in a better position than the lender to engage in face-to-face counseling. it is the most appropriate entity to provide entrance counseling. Moreover. lenders are already required to provide detailed disclosures to borrowers at the time of loan disbursement regarding the borrower's rights and obligations on GSL and SLS loans.

Comments: Several commenters indicated that they believe entrance counseling is redundant and ultimately ineffective because. in their view. early counseling does not make an impression on the student and does not significantly reduce defaults. Many other commenters supported the requirement of entrance counseling as an effective default reduction measure.

Discussion: No change has been made. The Secretary believes. and the experience of many schools confirms. that improving a borrower's understanding of the terms and conditions of the loan and impressing upon the borrower the importance of meeting his or her repayment obligations. at the time of receipt of loan proceeds. helps greatly in reducing defaults.

Comments: Several commenters suggested that the school be given the flexibility to schedule entrance counseling throughout the semester. or at least prior to the student's second loan disbursement. to avoid scheduling all counseling sessions with loan recipients during the registration period. when a substantial burden is already being imposed on the school's administrative resources.

Discussion: No change has been made. The Secretary believes it is imperative for students to receive loan counseling at. or prior to. the receipt of a CSL or SLS loan. The linkage of this counseling with the receipt of loan funds will impress upon the borrower the importance of the obligation to repay the money he or she is about to receive. thereby lessening the risk of default

Comments: Several commenters recommended that schools be allowed to use videotape presentations to counsel their students. Some commenters suggested that a videotape presentation followed up by a question and answer period with a financial aid officer would be an effective and efficient way to counsel borrowers.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the NPRM to allow for videotape presentations. and to require that the school provide each borrower an opportunity. after the entrance counseling session. to obtain answers to questions he or she may have regarding the loan.

Comments: Many commenters believed that requiring entrance counseling is too burdensome and costly for a school with a small financial aid staff and a large number of loan recipients. Other commenters expressed concern about the difficulty centralized financial aid offices would have in meeting with loan recipients at remote branches of the school. and suggested that the school be paid an administrative allowance to cover the extra burden.

Discussion: No change has been made. The Secretary believes that an institutional financial aid office can inexpensively reach its loan recipients through the use of group counseling sessions or videotapes.

Comments: One commenter recommended that the requirement in the NPRM that students in undergraduate non-baccalaureate vocational training programs be advised that they are obligated to repay their loans regardless of the outcome of their enrollment in the program. should be expanded to apply to all programs of study.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the regulations to make this requirement applicable to all programs of study.

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Section 682.605 Determining the date of a student's withdrawal

Comments: Several commenters indicated that the proposed change to § 682.605(a) requires clarification.

Discussion: No change has been made. The amendment to § 682.605(a) simply clarifies that the date of a student's withdrawal. calculated under § 682.605(b). only relates to the institution's reports to lenders and to the date on which the institution's duty to pay a refund arises. not to the withdrawal date used for refund calculations. For this latter purpose. § 682.604 uses the student's last recorded day of attendance as 34 CFR 668.22 has done since January. 1988.

Section 682.606 School refund policy

Comments: Many commenters objected to the proposed amendment to § 682.606 requiring a school to employ a *pro rata* refund policy for a student receiving or benefiting from a GSL. SLS. or PLUS program loan who withdraws prior to the completion of the academic period for which the loan is made. These commenters believe that this requirement represented an unwarranted Federal intrusion into a school's administrative practices and would impose a significant increase in the administrative burden involved in refund calculations. Numerous commenters also argued that a *pro rata* refund was unfair in light of the substantial "up front" costs incurred by schools in enrolling a student and in offering a program that does not appreciably change when a student withdraws from school. A number of commenters argued that their current institutional refund policies. developed using standards approved by their accrediting agencies. are fair and equitable and do not unfairly penalize dropouts or contribute to loan defaults. Many commenters noted that the loss of revenue to the school that would result from the increased volume and dollar amount of refunds calculated using a *pro rata* policy would inevitably be passed along to students in the form of increased tuition costs. Several commenters suggested that the availability of a *pro rata* refund would encourage a student to withdraw when he or she encounters academic or financial difficulties. Several commenters recommended restricting the use of a *pro rata* policy to high default schools since the Secretary. in announcing the proposed rules. noted the linkage between a high level of dropouts and defaults. Some commenters recommended that the Department should not regulate the refund policy applicable to students who complete at least one half of their programs to reduce the administrative burden on schools and the intrusiveness of the rule. and in recognition both of the "up front" costs argument and the inapplicability of the "drop out reduction" rationale to a student that completes a substantial portion of the program before dropping out.

Discussion: A change has been made. Although the widely used practice of over-enrollment and the ability of many schools to quickly replace a dropout with a new enrollee militate strongly against the "up front costs" argument. the Secretary is requiring the use of a *pro rata* refund policy only when the default experience of the school requires that step to maintain GSL. SLS. and PLUS program integrity. Accordingly. this provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30 percent. Any school with a default rate at or below 30% must continue to use fair and equitable refund policies as defined in existing regulations. Further. the Secretary believes that the prospects for default are greater among those students who withdraw early in their programs. and that the aim of this rule should therefore be to remove the incentive for a school to enroll a student lacking a reasonable prospect for completing his or her program of study. The Secretary has accordingly revised the proposed rule to require the use of a *pro rata* policy only for a student whose withdrawal date occurs prior to the halfway point of the student's program. or the end of the first six months of the student's program. whichever is earlier. The Secretary believes that this targeted application of the *pro rata* refund rule will achieve the goals of the rule with a minimum of adverse effects. Also. the Secretary has revised the rule to permit the school to round upward to the nearest 10 percent the portion of the program deemed to have been completed by a student. to reduce administrative burden.

Comments: Several commenters from public institutions indicated that State law prevents them from applying a *pro rata* refund policy.

Discussion: No change has been made. The Secretary considers the use of a *pro rata* refund policy by those schools with default rates above 30 percent to be a necessary and appropriate administrative requirement for participation in the GSL. SLS. and PLUS programs. Therefore. schools that are subject to this requirement are required to implement a *pro rata* refund policy if they wish to continue to participate in those programs. regardless of the requirements of State law.

Comments: Many commenters objected to the imposition of a *pro rata* refund policy on the grounds that it would create inequities between loan recipients and students who do not receive loans or who do not receive any Title IV aid. Some commenters felt that the proposed regulations would force schools to establish multiple refund policies. Others considered that they would. as a matter of equity. be forced to apply a *pro rata* refund policy to all students. A number of commenters asserted that any refund policy mandated by the Secretary should encompass all students at an institution.

Discussion: No change has been made. The Secretary's legal authority to mandate refund policies at school is limited to students benefiting from GSL. SLS. or PLUS loans.

Comments: Some commenters argued that the implementation of a *pro rata* refund policy would have little impact on the default rate at a school. particularly if the school continues to be permitted to apply refund amounts to other sources of aid before returning loan funds to lenders. Other commenters indicated that. since students often use loan funds for non-institutional costs. a *pro rata* refund policy affecting only direct institutional costs. may result minimal increases in refunds for many students.

Discussion: No change has been made. These final regulations require high default schools to take steps. such as the implementation of a *pro rata* refund policy. to address the problem of defaults by dropouts. The primary purpose of the *pro rata* refund requirement is not to increase the dollar amount of loan funds returned to the lender. but to remove the incentive for high default schools to enroll students who are inadequately prepared and are therefore likely to quickly drop out and default. This rule also will provide an incentive for schools to take steps on their own to improve their completion rates.

Comments: A number of commenters suggested various measures to either complement or replace the implementation of the *pro rata* refund policy. Some commenters suggested that loans should be awarded incrementally as the student progresses through the academic term or that the aid be awarded after the student has successfully completed the term. Others felt that lenders should be required to disburse Part B loans according to dates recommended by the school. Still other commenters suggested requiring credit-worthy endorsers as a way to reduce defaults.

Discussion: No changes have been made. Implementation of these suggestions would require statutory amendments and therefore does not fall within the scope of these final regulations.

Comments: Many commenters maintained that the administrative fee that the school would be allowed to retain. pursuant to § 682.606(c)(7). would not cover all administrative expenses. Some suggested raising the amount to as much as $300.

Discussion: A change has been made. The revised rule allows a school to retain at least 10 percent of tuition and fees paid by a student that attends school at all during the loan period. in addition to the $100/[illegible] administrative fee.

Section 682.607 Payment of a refund to a lender

Comments: A number of commenters stated that students often do not officially withdraw. Consequently. the school may not become aware of the student's withdrawal until the start of a subsequent academic period. or the school may not be able to identify the last date of attendance. Many of these commenters believe that the period for paying a refund to the lender should run from the start of the next academic period after that in which the borrower withdrew. as determined under § 682.605(b)(1)(ii). Other commenters urged the Secretary to retain the prior rule. which they read as requiring that a refund to be sent to the lender within 30 days of the date of the school's determination that the student has withdrawn.

Discussion: No change has been made. Current regulations treat the last recorded date of attendance as the dropout date for students who unofficially withdraw. 34 CFR 668.22. Under the prior regulations. with respect to an unofficial withdrawal. a refund was required to be sent within 30 days of the withdrawal date. *i.e.*, the last recorded date of attendance. This date could occur several months before the end of the academic period in which the student ceased attendance. The Secretary does not believe this result is consistent with the administrative practices of many schools in monitoring enrollment status. However, the Secretary continues to be concerned with the length of time a refund remains unpaid, because the Secretary is continuing to pay interest benefits and special allowance on the full outstanding balance of the loan even though the funds are no longer needed by the borrower to pay educational expenses, and because a persistently inflated loan balance increases the risk of default. The Secretary believes that a school cannot be permitted to wait until the beginning of the next academic period to determine which students have unofficially withdrawn and pay their refunds. The Secretary also believes that, once the school has determined that the student has withdrawn, the school should expeditiously process any refund owed, and has therefore revised the regulations to require payment of a refund within 60 days of the date of the school's determination that the student has withdrawn. *See* §682.607(c)(2)(iv).

Comments: Several commenters suggested that the period in which a refund must be paid be extended from 30 up to 60 days. They believe that 30 days from the earlier of the dates specified in § 682.607(c)(1) does not provide sufficient time to allow for unexpected delays in processing refunds (*e.g.*, computer delays, the involvement of more than one office in the refund process, etc.), and that such a timeframe, immediately following the end of an academic period, could create undue administrative burdens.

Discussion: A change has been made. Section 682.607(c) now requires that the school must pay the lender a refund within 60 days of the earlier of the dates specified in § 682.607(c)(1) or, pursuant to § 682.607(c)(2), within 60 days after the last day of an approved leave of absence when the student does not return to school.

Comments: Several commenters questioned how the use of the term "semester" in § 682.607(c)(1)(ii) would apply to schools that do not use semesters.

Discussion: A change has been made. The final regulation uses the term "academic term" to clarify its applicability to quarters and trimesters.

Section 682.610 Records, reports, and inspection requirements for participating schools

Comment: Several commenters pointed out any change in the borrower's surname that the school was aware of would be very useful to the holder of the loan.

Discussion: A change has been made. This section in the final regulation has been revised to require a school to furnish upon request any information it has regarding the borrower's surname.

Comments: One commenter suggested that this provision would be an administrative burden for the school, requiring them to track former students.

Discussion: No change has been made. Nothing in this section requires a school to furnish any more information than it has on hand respecting the last known address, surname, employer and employer address of a borrower who attends or has attended the school.

[FR Doc. 89-13389 Filed 6-1-89; 3:51 pm]

BILLING CODE [illegible]

Exhibit V **List of Forthcoming Federal Regulations**

The following list was taken from "Unified Agenda of Federal Regulations," *Federal Register*, October 29, 1990.

U.S. Department of Education

Student Assistance General Provisions (34 CFR 668)

- Selective service requirements (NPRM to be issued)
- Immigration status confirmation (NPRM to be issued)
- Clock hour/credit hours (NPRM issued October 1, 1990)

Perkins Loan Program (34 CFR 674)

- Collection costs/write-offs (NPRM issued November 13, 1990)
- Promissory note technical corrections (NPRM to be issued)

Guaranteed Student Loan Programs (34 CFR 682)

- Legislative changes including institutional requirements (NPRM issued November 20, 1990)
- Additional legislative changes (NPRM to be issued)
- Additional procedures associated with "Default Reduction Initiative" (NPRM issued June 5, 1989)

U.S. Department of Health and Human Services

Health Professions Student Loan Program (43 CFR 57)

- Cash management (NPRM issued 12/18/89
- Statutory changes from P.L. 100-607 (forthcoming)

Nursing Student Loan Program (42 CFR 57, Subpart D)

- Cash management (NPRM issued 12/18/89)
- Statutory changes from P.L. 100-607 (forthcoming)

Health Education Assistance Loan Program (42 CFR 60)

- Statutory changes from P.L. 100-607 (forthcoming)
- Bankruptcy revisions (NPRM issued 3/29/90)

Source: "Unified Agenda of Federal Regulatiaons," *Federal Register* (October 29, 1990).

Appendix C: *Statutes of Limitations*

A statute of limitations controls the time period during which a lender may bring suit against a defaulted borrower. Statutes vary from state to state. Because statutes of limitations occasionally change, institutions should consult legal counsel when appropriate.

A change in circumstance or procedure may change the statute of limitations. For example, some states allow an increased length of time for instruments signed under seal; some allow an increased length of time for written agreements that carry the signatures of attesting witnesses; and in some states a defendant who resides out of state is controlled by that state's statute. Additionally, statutes of limitations control the length of time a judgment can be used; however, those types of statutes are beyond the limitation of the following table.

State	Statute of Limitations	Citation	Excerpt from Statute
Alabama	Six years	AL Code Sec 6-2-34(5)	The following must be commenced within six years ***(5) Actions for the recovery of money upon a loan, ***.
Alaska	Six years	AK Stat Sec 09.10.050	No person may bring an action (1) upon a contract or liability, express or implied *** unless brought within six years.
Arizona	Six years	AZ Rev Stat Ann Sec 12-548	An action for debt where indebtedness is evidenced by or founded upon a contract in writing executed within the state shall be commenced and prosecuted within six years after the cause of action accrues, and not afterward.
Arkansas	Five years	AR Stat Ann Sec 37-209	Actions on promissory notes, and other instruments in writing, not under seal, shall be commenced within five (5) years after the cause of action shall accrue and not after.
California	Four years	CA Civil Code Sec 337 (West)	Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing, ***.
Colorado	Six years	CO Rev Stat Sec 13-80-103.5	The following actions shall be commenced within six years after the cause of action accrues, and not thereafter: (a) All actions to recover a liquidated debt or an unliquidated, determinable amount of money due to the person bringing the action, all actions for the enforcement of rights set forth in any instrument securing the payment of or evidencing any debt. . . .

State	Statute of Limitations	Citation	Excerpt from Statute
Connecticut	Six years	CT Gen Stat Ann Sec 52-576	No action for an account, or for a debt due by book to balance book accounts, or on any simple or implied contract, or upon any contract in writing not under seal, shall be brought but within six years next after the right of action accrues:***
Delaware	Six years	DE Code Ann Tit X, Sec 8109	When a cause of action arises from a promissory note, bill of exchange, or an acknowledgement under the hand of the party of a subsisting demand, the action may be commenced at any time within 6 years from the accruing of such cause of action.
District of Columbia	Three years	DC Code Ann Sec 12-301(7)(8)	Except as otherwise specifically provided by law, actions for the following purpose may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues: *** (7) on a simple contract, express or implied — 3 years; (8) for which a limitation is not otherwise specifically prescribed — 3 years; ***
Florida	Five years	FL Stat Ann Sec 95.11	Actions other than for recovery of real property shall be commenced as follows: *** (2) Within five years.- ***(b) A legal or equitable action on a contract, obligation or liability founded on a written instrument.
Georgia	Six years	GA Code Ann Sec 9-3-24 (West 1982)	All actions upon promissory notes, drafts, or other simple contracts in writing shall be brought within six years after the same become due and payable. . . .
Hawaii	Six years	HI Rev Stat Sec 657-1	The following actions shall be commenced within six years next after the cause of action accrued, and not after (1) Actions for the recovery any debt founded upon any contract, obligation, or liability. . . .
Idaho	Five years	ID Code Sec 5-216	Action on written contract.— Within five (5) years; An action upon any contract, obligation or liability founded upon an instrument in writing.
Illinois	Ten years	IL Ann Stat ch 2, Sec 13-206 (Smith-Hurd)	Ten year limitation . . . actions on bonds, promissory notes, . . . shall be commenced within 10 years next after the cause of action accrued. . . .
Indiana	Ten years	IN Code Ann Sec 34-1-2-2 (Burns)	The following actions shall be commenced after the cause of action has accrued, and not afterwards. *** Fifth. Upon promissory notes, bills of exchange and other written contracts for the payment of money hereafter executed, within ten (10) years.
Iowa	Ten years	IA Code Ann Sec 614.1(6) (West)	Actions may be brought within the times herein limited, . . . ***6. Written contracts. Those founded on written contracts, . . . within ten years.
Kansas	Five years	KS Stat Ann Sec 60-511	The following actions shall be brought within five (5) years: (1) An action upon any agreement, contract or promise in writing.

State	Statute of Limitations	Citation	Excerpt from Statute
Kentucky	Fifteen years	KY Rev Stat Ann Sec 413.090	. . . the following actions shall be commenced within fifteen (15) years after the course of action first accrued: *** (2) An action upon a recognizance, bond or written contract.
Louisiana	Five years	LA Code Civ Pro Ann art 3540	Actions on . . . all promissory notes, whether negotiable or otherwise, are prescribed by five years, reckoning from the day when the engagements were payable.
Maine	Six years	ME Rev Stat Ann Tit 14 Sec 752	All civil actions shall be commenced within 6 years after the cause of action accrued and not afterwards. . . .
Maryland	Three years	MD Courts and Judicial Proceeding Code Ann Sec 5-101	A civil action at law shall be filed within three years from the date it accrues. . . .
Massachusetts	Six years	MA Gen Laws Ann ch260, Sec 2	Actions of contract . . . shall, except as otherwise provided, be commenced only within six years next after the cause of action accrues.
Michigan	Six years	MI Comp Law Ann Sec 600.5807(8)	No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless . . . he commences the action within the periods of time prescribed by this action. *** (8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.
Minnesota	Six years	MN Stat Sec 541.05(1)	. . . the following actions shall be commenced within six years: (1) Upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed.
Mississippi	Six years	*W.T.Raleigh Co.* v. *Fortenberry*, 138 M 410 *Moore* v. *Illinois C.R. Co.*, 180 M 276	Citing case law, written contracts for a specified amount are governed by six-year statutes of limitations.
Missouri	Ten years	MO Ann Stat Sec 516.110(1)	What actions shall be commenced within ten years. Within ten years: (1) An action upon any writing, whether sealed or unsealed, for the payment of money or property.
Montana	Eight years	MT Code Ann Sec 27-2-202(1)	The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.
Nebraska	Five years	NE Rev Stat Sec 25-205(1)(1)	Except as provided . . . an action upon a specialty, or any agreement, contract, or promise in writing, or foreign adjustment, can only be brought within five years. . . .
Nevada	Six years	NV Rev Stat Sec 11.190(b)	Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows: 1. Within 6 years: (b) An action upon a contract, obligation or liability founded upon an instrument in writing. . . .

State	Statute of Limitations	Citation	Excerpt from Statute
New Hampshire	Six years	NH Rev Stat Ann Sec 508:4(I)	Except as otherwise provided by law, all personal actions, except for actions for slander or libel, may be brought only within 6 years of the time the cause of action accrued.
New Jersey	Six years	NJ Rev Stat Sec 2A:14-1	Every action at law . . . for recovery upon a contractual claim or liability, express or implied, not under seal, . . . shall be commenced within 6 years next after the cause of any such action shall have accrued.
New Mexico	Six years	NM Stat Ann Sec 37-1-3	Those founded upon any bond, promissory note, bill of exchange or other contract in writing, or upon any judgment of any court not of record, within six years.
New York	Six years	NY CPLE Law Sec 213(2)	The following actions must be commenced within six years: (2) an action upon a contractual obligation of liability, express or implied. . . .
North Carolina	Three years	NC Gen Stat Sec 1-52(1)	Art. 5 Other limitations. Sec 1-52 Three years. Within three years an action—(1) Upon a contract ***
North Dakota	Six years	ND Cent Code Sec 28-01-16(1)	The following actions must be commenced within six years after the cause of action has accrued: 1. An action upon a contract***
Ohio	Fifteen years	OH R C Sec 2305.06	Except as provided in section 1302.98 of the Revised Code, an action upon a specialty or an agreement, contract, or promise in writing shall be brought within fifteen years after the cause thereof accused.
Oklahoma	Five years	OK Stat Ann Tit 12, Sec 95	Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards: First: Within five (5) years: An action upon any contract, agreement or promise in writing.
Oregon	Six years	OR Rev Stat Sec 12.080(1)	An action upon a contract or liability *** Shall be commenced within 6 years.
Pennsylvania	Six years	PA Cons Stat Sec 5527(2)	The following actions and proceedings must be commenced within six years: . . . (2) An action upon a contract, obligation, . . . note or other instrument in writing.
Puerto Rico	Five years	PR Laws Ann Tit 31, Sec 5296(3)	Actions to demand the fulfillment of the following obligations prescribe in five years: . . . (3)That of any other payments which should have been made annually or in shorter periods.
Rhode Island	Ten years	RI Gen Laws Sec 9-1-13(a)(a)	Except as otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after.
South Carolina	Six years	SC Code Ann Sec 15-3-530(1) (Law Co-op)	Within six years: (1) An action upon a contract, obligation or liability. . . .

State	Statute of Limitations	Citation	Excerpt from Statute
South Dakota	Six years	SD Codified Laws Ann Sec 15-2-13(1)	Except where, in special cases, a different limitation is prescribed by statute, the following civil actions other than for the recovery of real property can be commenced only within six years after the cause of action shall have accrued: (1) an action upon a contract, obligation or liability. . . .
Tennessee	Six years	TN Code Ann Sec 28-3-109(a)(3)	The following actions shall commence within six (6) years after the cause of action accrued: (3) Actions on contract not otherwise expressly provided for.
Texas	Four years	TX Civil Practice and Remedies Code Ann Sec 16.004(a)(3)	A person must bring suit on the following actions not later than four years after the day the cause of action accrues: *** (3) debt.
Utah	Four years	UT Code ANN Sec 78-12-25	***Instrument in writing within four years.
Vermont	Six years	VT Stat Ann Tit 12, Sec 511	A civil action . . . shall be commenced within six years after the course of action accrues and not thereafter.
Virgin Islands	Six years	VI Code Ann Tit 5, Sec 31(3)(A)	Civil actions shall only be commenced within the periods prescribed below after the cause of action shall have accrued . . .:***(3) Six years—(A) An action upon a contract or liability. . . .
Virginia	Five years	VA Code Sec 8.01-246(2)	***In action on any contract which is not otherwise specified and which is in writing and signed by the party to be charged thereby, or by his agent, within five years whether such writing be under seal or not.
Washington	Six years	WA Rev Code Ann Sec 4.16.040(1)	. . . Within six years: (1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.
West Virginia	Ten years	WV Code Sec 55-2-6	Every action to recover money *** if it be upon an award, or upon a contract in writing, signed by the party to be charged thereby, or by his agent, but not under seal, within ten years;***
Wisconsin	Six years	WI Stat Ann Sec 893.43 (West)	An action upon any contract, obligation or liability . . . shall be commenced within 6 years after the cause of action accrued or be barred.
Wyoming	Ten years	WY Stat Sec 1-3-105(a)(i), as modified in Sec. 1-3-105(a)(iii)	(a) Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action accrues: (i) Within ten (10) years, an action upon a specialty or any contract, agreement or promise in writing. *** (iii) Within five (5) years after the debtor establishes residence in Wyoming, an action on a foreign claim, judgment or contract, express or implied, contracted or incurred and accrued before the debtor became a resident of Wyoming.

Appendix D: *Glossary of Terms and Acronyms*

ACA. *See* Administrative Cost Allowance.

Acceleration. An option exercisable by the lender of a loan whereby the lender can make immediately due the entire unpaid balance of a loan, including accrued interest and penalty charges, even though the loan has not fully matured. A loan is typically accelerated when a borrower's payment is past due and the borrower refuses to bring the account up to date. The lender will usually have to litigate to collect the debt.

Administrative Cost Allowance (ACA). Adjustments an institution makes to offset the cost of administering student loan programs.

Amortization. The process of paying a debt over a stated period of time by making regular periodic payments of accrued interest and partial principal.

Assignment. The process of transferring a defaulted Perkins Loan, National Direct, or National Defense promissory note to the Department of Education for collection. Loans accepted by ED for assignment are removed from the institution's list of defaulted borrowers and become the property of the U.S. government and can no longer be considered an asset to the Perkins Loan fund.

Attach. To seize the property or assets of a borrower through a legal process.

Award Letter. Notification of a special amount of financial assistance from federal and institutional financial aid programs offered to a student. The award letter usually provides information on the types and amount of student aid and on the specific program. The letter may also inform the student when the aid will be applied to his or her educational expenses at the institution.

Bankruptcy. The legal condition of an insolvent person who has sought and obtained relief under the bankruptcy laws. The remedy sought under these laws is the elimination or reorganization of the debtor's obligation to pay existing debts. (*See also* Chapter 7 and Chapter 13 Bankruptcy.)

BHP. Bureau of Health Professions.

Billing. Process of notifying borrowers of amounts due by the sending of advance, due, or post-due notices.

Billing Services. A business that services loan accounts for a lending institution on a fee basis.

Campus-Based Programs. The term generally is applied to three Title IV programs administered at the institutional level: the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs. The HPSL and NSL programs are also "campus-based."

Cancellation. Occurs when a borrower meets specific requirements to forgive his or her obligation to repay a portion or the total principal and interest of the obligation.

CCPA. Consumer Credit Protection Act.

CFR. *Code of Federal Regulations.*

Chapter 7 Bankruptcy. Liquidation or straight bankruptcy that releases the debtor from liability for dischargeable debts. Under Chapter 7, educational loans are considered nondischargeable for five years after the loan becomes due if repayment would not impose undue hardship on the borrower.

Chapter 13 Bankruptcy. A type of bankruptcy in which creditors are repaid a percentage of the debt.

Closed-End Promissory Note. A promissory note that is used for only one advance. For instance, a student who signs for an advance each semester at a four-year institution would receive eight promissory notes.

Collection Agency/Firm. A business that collects delinquent or defaulted loan accounts for a lender.

Collections. The money returned to a fund from repayment of disbursed loans.

Complaint. The original court pleading that commences a lawsuit.

Consolidation Loan. A single loan that consolidates, by means of a contract between a borrower and a lender, loans from more than one lender and provides the borrower with one interest rate and one repayment period. Borrowers with Title IV programs loans and HPSL programs may be eligible for loan consolidation.

Cured Process Loans. When an institution assigns a defaulted loan to the federal government and due diligence steps have been incompletely or incorrectly performed, an institution can resubmit the loan as a "cured process loan" once the procedures have been correctly and completely performed.

Default. A student loan is considered in "default" when the borrower has failed to make payments within a time frame prescribed in law or regulation or when the borrower has failed to comply with other terms of the promissory note or written payment agreement.

Default Rate (HPSL/NSL). The ratio (stated as a percentage) between the defaulted principal amount outstanding and the institution's matured loans. For the purpose of this definition, *defaulted principal* is the principal balance—amount borrowed minus principal paid or canceled—on loans in default for more than 120 days; a *matured loan* is the total principal amount of loans made by an institution under the program minus the principal amount of loans to borrowers that are either enrolled in a full-time course of study at the institution or in a grace period.

Default Rate (Perkins/NDSL). An indication of the number of loans in an institution's loan portfolio that are in default; the rate is shown as a percentage or fractional part of the total loans. Default does not include any portion of the loan that has been: one, repaid or canceled; two, assigned to ED; three, discharged in bankruptcy; or four, subject to satisfactory written payment agreement with which the borrower is currently in compliance.

Default Rate (Stafford/SLS). The percentage of current and former students at an institution who enter repayment for Stafford and/or SLS loans received for attendance at the institution in a fiscal year and who default before the end of the following year. This default rate is known as the "fiscal year cohort default rate."

Defense Loan. *See* National Defense Student Loan.

Deferment. A period in which repayment of principal of a loan is suspended because the borrower meets certain requirements. During deferment, interest usually does not accrue and the loan is not considered past due.

Delinquency. The failure of a borrower to make an installment payment when due.

Direct Loan. *See* National Direct Student Loan.

Disbursement. The process by which financial aid funds are made available to students.

Discharge. The final action in bankruptcy that releases a debtor from any legal obligation to repay a debt. Discharged debts are written off by the creditor.

Disclosure Statement. A written notice directed to the borrower stating the date the first payment installment on a loan will be due, the total amount due, the frequency and number of required payments, and the borrower's responsibility to repay the debt.

Documentation. Records that verify that certain actions were taken. For student aid purposes, documentation should include a description of all steps taken in decisions made concerning awards, disbursement, notification, and, in the case of a lien, collection of the debt.

Due diligence. The procedures followed by a lending institution in exercising its responsibilities to inform a borrower of his or her rights under a loan program, to notify the borrower, and to conduct and complete collection efforts.

ED. U.S. Department of Education.

Endorser. A person other than the borrower who cosigns a promissory note. An endorser can be held responsible for repayment of the debt if the borrower defaults.

Entrance Interview. An information session the lending institution must offer the borrower before disbursing a loan. The lending institution must inform the borrower of his or her rights and responsibilities in incurring the debt and provide details regarding such matters as the amount of the loan, the date repayment must begin, deferment and cancellation provisions, default and its consequences, and the charges connected with making and collecting the loan. Counseling may be conducted by correspondence if a personal or group interview is not possible.

Exit Interview. An information session that institutions must offer to borrowers before they leave the institution. If a student does not receive exit counseling, the institution must send him or her exit counseling information at his or her last known address. The interview must encompass an explanation of the borrower's rights and responsibilities and a discussion of repayment, including a schedule projecting average installment amounts at the borrower's interest rate and a review of options for repayment.

FDCPA. Fair Debt Collection Practices Act.

Federal Capital Contribution (FCC). Federal funds contributed to maintain educational loan funds.

Federal Insured Student Loan (FISL) Program. A program created to serve lenders who did not have reasonable access to state guarantee agency loan programs. The FISL program was phased out in 1984.

FERPA. Family Educational Rights and Privacy Act.

Financial Aid Transcript. A form used by an institution to collect data about financial aid received by a student at other institutions.

FISAP. Fiscal Operations Report and Application to Participate.

FISL. *See* Federal Insured Student Loan.

Forbearance. The opportunity to extend the time of repayment of loans due to circumstances not covered by deferment when the borrower is unable to meet loan repayment obligations for reasons of hardship.

FR. Federal Register.

FRCP. *Federal Rules of Civil Procedure.*

FY. Fiscal year.

Garnishment. A court order to repay a debt in which a portion of the debtor's personal wages or bank account are automatically paid to the creditor. The amount garnished cannot exceed 25 percent of personal earnings.

Grace Period. The defined length of time allowed before repayment of a loan begins after the borrower has terminated student status or ceases to qualify for a loan (for example, a Perkins Loan borrower who ceases to be at least a half-time student). Some loans offer grace periods after certain types of deferment. Interest does not accrue during a grace period.

Guaranteed Student Loan (GSL). The original name of the Stafford Loan.

Guaranteed Student Loan Programs. A variety of programs, including PLUS Loans, Supplemental Loans for Students, Stafford Loans, and Consolidation Loans, that offer long-term, low-interest loans to students. These programs make use of private loan capital and the loans are guaranteed by state or private nonprofit guarantee agencies and reinsured by the federal government.

HEA. Higher Education Act of 1965, as amended.

HEAL. *See* Health Education Assistance Loan Program.

Health Education Assistance Loan (HEAL) Program. A loan program guaranteed by the Department of Health and Human Services to assist full-time health professions students in attending their chosen, participating school.

Health Professions Student Loan (HPSL) Program. A loan program established in 1963 under Title VII of the Public Health Service Act to assist students pursuing a course of study leading to a degree of doctor of medicine, doctor of dental surgery or the equivalent, doctor of osteopathy, doctor of optometry or the equivalent, bachelor of science in pharmacy or the equivalent, doctor of podiatry or the equivalent, or doctor of veterinary medicine or the equivalent.

HHS. U.S. Department of Health and Human Services.

HPSL. *See* Health Professions Student Loan Program.

HRSA. Health Resources and Services Administration.

ICC. *See* Institutional Capital Contribution.

ICL. *See* Income Contingent Loan Program.

ILP. *See* Institutional Loan Program

Income Contingent Loan (ICL) Program. A loan program in which yearly repayments are based on the borrower's previous year's adjusted gross income. ED currently is sponsoring a demonstration project for this program.

Institutional Capital Contribution (ICC). Institutional funds contributed to establish or maintain a revolving loan fund. In the case of the Perkins Loan program, the ICC must be equal to at least one-ninth of the FCC.

Institutional Loan Program (ILP). A nonfederal loan program by which an institution loans money directly to a student or his or her family. ILPs are generally designed to fund the "tuition gap" between federally guaranteed student loans and the cost of tuition for students ineligible for scholarships.

Judgment. The formal decision of a court.

Late Charge. A fee assessed a borrower for failing to make all or part of an installment payment when due. Since July 1, 1987, a late charge must be assessed against a Perkins Loan borrower whose payment becomes overdue on a loan made for a period of enrollment that began on or after January 1, 1986.

Lien. A legal claim upon a borrower's real or personal property that may be exercised if the borrower defaults on a loan repayment.

Litigation. A procedure used in student loan collection in which a plaintiff sues a defendant.

Loan. An advance of funds requiring a recipient to repay a specified amount under prescribed conditions.

Low-Income Borrower. ED and HHS define "low-income" borrowers under specific program regulations. These borrowers may be subject to special repayment arrangements.

Matured Loan. A loan that has become due and payable. A fully matured loan is a loan for which the entire or remaining principal is due.

NACUBO. National Association of College and University Business Officers.

NASFAA. National Association of Student Financial Aid Administrators.

National Defense Student Loan (NDSL) Program. A loan program for undergraduate and graduate students authorized by Title II of the National Defense Education Act of 1958. The Defense Loan program was changed to the Direct Loan program effective July 1, 1972.

National Direct Student Loan (NDSL) Program. A loan program for undergraduate and graduate students established under Title IV-E of the Higher Education Act of 1965, as amended. The Direct Loan program was changed to the Perkins Loan program effective October 6, 1986.

NDSL. *See* National Defense *and* National Direct Student Loan Programs.

NPRM. Notice of Proposed Rulemaking.

NSL. *See* Nursing Student Loan Program.

Nursing Student Loan (NSL) Program. A loan program established in 1964 by Title VIII of the Public Health Service Act of 1963 to assist students pursuing a course of study leading to an associate degree in nursing, a diploma in nursing, a baccalaureate degree or the equivalent in nursing, or a graduate degree in nursing.

Offset. To deduct the amount or a portion of the amount an individual owes an entity from the amount the entity owes the individual. For student loan purposes, a debt is offset when a state or the federal government deducts all or part of a defaulted loan from a taxpayer's income-tax refund.

OMB. Office of Management and Budget.

Open-Ended Promissory Note. A promissory note that the borrower signs only once. Each disbursement is listed on an attached schedule of advances that is signed and dated at the time of disbursement. A new note is signed only if program regulations change, in which case the old note is closed and a new note with a new schedule of advances is signed.

OSFA. Office of Student Financial Assistance (ED).

Partial Payment. Payment of a portion of the amount due, leaving the loan in a past-due status.

Past-Due Loan. A loan for which payment has not been received by the scheduled due date.

Penalty Charge. A charge assessed when a borrower fails to pay all or part of a scheduled installment when due or to file deferment or cancellation forms on time.

Perkins Loan Program. A program that provides low-interest, long-term loans to needy undergraduate and graduate students authorized by Title IV-E of the Higher Education Act of 1965, as amended. The Perkins Loan program was formerly called the National Direct Student Loan program; the name change was effective October 6, 1986.

Personal and Confidential Information Form. A form by which to obtain sufficient information to trace a lost borrower. A new form should be filled out every time a borrower applies for a loan.

PLUS Program. A loan program authorized by Title IV-B of the Higher Education Amendments. The PLUS program, one of the guaranteed student loan programs, provides loans for parents of dependent undergraduates, graduates, or professional students, or independent undergraduates. PLUS loans are made by commercial lenders.

Postponement. A period during which an institution "accumulates" payments, keeping the loan in current status. At the end of an academic year, the borrower is billed for the full year's payments, which can then be canceled or deferred. Postponement was developed because students in deferred or canceled status must request deferment or cancellation annually, and payments are due more frequently.

Pre-loan Counseling. See Entrance Interview.

Principal. Principal refers to the loan amount borrowed.

Program Review. The process by which one or more financial aid programs of an institution are reviewed by a federal agency to assess compliance with federal law and regulations and institutional policy. The review may include a review of managerial and administrative capabilities.

Promissory Note. The written document (contract) that creates the loan agreement when signed by the borrower. The note contains the rights, responsibilities, and obligations of the parties. Federal regulations stipulate minimum note requirements.

Quality Control. Quality control is defined by ED as "a process by which an institution establishes a system for checking the overall quality and accuracy of its campus-wide student aid administration."

Reaffirmation (Revivorship). An act by which a debtor renews an obligation that marks the beginning of a new period of limitation. This varies by state.

Repayment Schedule. A listing of the principal and interest due on each installment payment of a loan, number of payments required to repay a loan, interest rate, due date of the first payment, and frequency of payments.

SAR. Student Aid Report.

Skip-Trace. The process of locating the current address of a borrower. The loan collector may contact family members and personal references or faculty and staff references listed on loan applications, exit interviews, or other documents. Both ED and HHS have skip-trace provisions with the Internal Revenue Service.

SLS. *See* Supplemental Loans for Students.

Stafford Loan. A federally subsidized, low-interest loan, formerly known as a Guaranteed Student Loan, authorized under Title IV of the Higher Education Act of 1965, as amended. Loans are made by participating lenders (primarily banks, savings and loan associations, and credit unions), so loan proceeds are not government money. Stafford Loans are guaranteed by agencies that repay a loan if the borrower dies or becomes totally permanently disabled. The program is subsidized by ED, which pays additional interest to the lenders of Stafford Loans, SLSs, and PLUSs to keep the loans below market rate.

Statement of Educational Purpose. A document stating a financial aid recipient's agreement to use financial aid for educational purposes only. The statement must be signed by every student who receives financial aid from the ED Title IV programs.

Statement of Rights and Responsibilities. A statement that institutions are required to provide when disbursing a loan that informs the borrower of his or her rights and responsibilities regarding a loan.

Supplemental Loans for Students (SLS). A Title IV aid program that provides loans to students who do not meet the criteria for a Stafford Loan or who qualify for additional aid beyond the Stafford Loan. SLS loans are available to graduate, professional, and independent undergraduate students and, under certain conditions, to dependent undergraduates.

Temporarily Totally Disabled. An injury or illness that prevents a borrower from attending a higher education institution or from working full time. A loan cannot be canceled if a borrower is temporarily disabled. A Perkins Loan or

NDSL may be deferred under these circumstances. Determination must be made on the basis of medical evidence. The maximum deferment is three years.

Title IV Programs. Programs administered by ED under Title IV of the Higher Education Act of 1965, as amended. The programs include the Pell Grant, State Student Incentive Grant, and Supplemental Educational Opportunity Grant programs; Robert C. Byrd Honors Scholarships; Perkins Loan, Stafford Loan, PLUS, SLS, and Consolidation Loan programs; the Income Contingent Loan program; and the College Work-Study program.

Totally and Permanently Disabled. Some loans can be canceled if a borrower is unable to work and earn money because of a medically determined impairment if the impairment is expected to continue for an indefinite period or result in death.

Truth-in-Lending Statement. A document that must be provided to a borrower that states the interest rate and other information relative to a consumer credit action.

Uncollectible Loan. A loan that an institution is unable to collect despite correct application of due diligence procedures. When a Perkins Loan or NDSL is determined uncollectible, it may be assigned to the federal government. Lenders of HPSL and NSL loans may "write off" an uncollectible loan if the school has exercised due diligence, subject to approval by the HHS Secretary.

U.S.C. *United States Code.*

U.S. National. A noncitizen who, under the Immigration and Nationality Act, owes permanent allegiance to the United States.

VISTA. Volunteers in Service to America.

Write Off. A procedure for removing an uncollectible account from an institution's portfolio subject to individual loan program regulations. Both HHS and ED may change their rules regarding write offs soon.

Appendix E: *Key References and Resources*

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Telephone Inquiries

The U.S. Department of Education operates a center that handles telephone inquiries on student aid topics and processes orders for its publications, including "Dear Colleague" Letters. The telephone number for the Federal Student Aid Information Center is (800) 4-FED AID. The center is open between 9:00 a.m. and 5:30 p.m., EST, Monday through Friday.

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